

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 1:21cr393

CHRISTOPHER PENCE,

Defendant.
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Transcript of a Suppression Hearing held on
June 8, 2023, at the Alexander Pirnie Federal
Building, 10 Broad Street, Utica, New York, the
HONORABLE DAVID N. HURD, United States District
Judge, Presiding.

A P P E A R A N C E S

For Plaintiff: UNITED STATES ATTORNEY'S OFFICE
James T. Foley U.S. Courthouse
Room 231
445 Broadway
Albany, New York 12207-2924
BY: EMMET J. O'HANLON, ESQ.
Assistant United States Attorney

For Defendant: SCHILLINGER & ASSOCIATES, PLLC
11 North Pearl Street
Suite 1700
Albany, New York 12207
BY: ERIC K. SCHILLINGER, ESQ.

Also Present: Brian DeCarr, FBI Special Agent

*Lisa M. Mazzei, RPR
Official United States Court Reporter
10 Broad Street
Utica, New York 13501
(315) 266-1176*

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I N D E X O F T E S T I M O N Y

<u>Government's</u> <u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Brian DeCarr	5	29	63	
Chris Andersen	65	77	97	
Patrick Lydon	98	106		
Defendant's				
<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Michelle Pence	113	122		
Christopher Pence	128	141		

1 (Open court, 10:01 a.m.)

2 THE CLERK: United States vs. Christopher Pence,
3 21-CR-393.

4 Attorneys, please note your appearance for this
5 record.

6 MR. O'HANLON: Good morning, your Honor.
7 Assistant U.S. Attorney Emmet O'Hanlon for the government.
8 Seated to my right or rather standing to my right is FBI
9 Special Agent Brian DeCarr, who is the case agent in this
10 case.

11 MR. SCHILLINGER: Good morning, your Honor.
12 Eric Schillinger for the defendant Christopher Pence.

13 THE COURT: Okay. Be seated. We are here for an
14 evidentiary hearing.

15 First of all, I want the record to show that I have
16 reviewed all of the submissions, including the affidavits by
17 the defendant and both agents.

18 Also, we have reviewed the memorandums of law and I
19 understand that the parties are prepared to submit to the
20 admission of the proposed exhibits by both sides. Is that
21 correct?

22 MR. O'HANLON: That is correct, your Honor.

23 MR. SCHILLINGER: Yes, Judge.

24 THE COURT: Okay. The defendant's exhibits are
25 received and the government's exhibits are received. I

1 understand that there are two witnesses for the government;
2 correct?

3 MR. O'HANLON: There will be three, your Honor.
4 The three agents.

5 THE COURT: The three agents, correct. And there
6 will be two witnesses on behalf of the defense.

7 We will hear the testimony; direct, cross, recross,
8 redirect and recross for each witness. Two opportunities to
9 examine each witness.

10 After we conclude the testimony -- and as I said, I
11 have reviewed the affidavits of all of the witnesses and they
12 are part of the record. So keep that in mind when you have
13 your witness on the stand.

14 And, Mr. O'Hanlon, you may call your first witness.

15 MR. O'HANLON: Thank you, your Honor. The
16 government will call Special Agent Brian DeCarr. And I'll
17 just make a note for the record that he is the case agent in
18 this case and pursuant to Rule of Evidence 615(b), after his
19 testimony, he is going to stay at counsel table.

20 THE COURT: So noted.

21 THE CLERK: Sir. Good morning, sir.

22 Sir, can you please state your full name. Spell
23 your last name for this record.

24 THE WITNESS: Yes. My name is Brian DeCarr. Last
25 name is D-E-C-A-R-R.

DeCarr - Direct

5

1 THE CLERK: Thank you, sir.

2 B R I A N D E C A R R, called as a
3 witness and being duly sworn, testifies as follows:

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION BY MR. O'HANLON:

6 Q Good morning, Special Agent.

7 A Good morning.

8 Q What is your current occupation and assignment?

9 A I am a special agent with the FBI in Albany. I
10 currently work counter intelligence matters.

11 Q How long have you been with the bureau?

12 A I've been with the bureau since January of 2020.

13 Q Did you have any prior law enforcement experience
14 before joining the FBI?

15 A Yes, I did. Before joining the FBI, I was a New York
16 State Trooper. And before that I was a police officer with
17 the Pentagon Force Protection Agency.

18 Q Going back to September of 2021, how were you assigned
19 with the FBI at that time?

20 A At that time, I was assigned to the Capital District
21 Safe Streets Task Force where I worked transnational
22 organized crime, violent crime, and gangs.

23 Q What were your duties in that capacity specifically
24 with regard to a murder-for-hire investigation in September
25 of 2021?

1 A In September of 2021, we received information from FBI
2 Knoxville that there was a murder-for-hire scheme to kill two
3 people in Hoosick Falls, New York.

4 Q Who what was the source of the information that FBI
5 Knoxville was working off of?

6 A FBI Knoxville had a source with access to a
7 murder-for-hire site on the dark web.

8 Q What is the dark web?

9 A The dark web is a portion of the Internet that is only
10 accessible through special authorization systems or
11 configurations.

12 Q And what was the content of the information that FBI
13 Knoxville had received?

14 A The information FBI Knoxville received was
15 communications between the administrator of a murder-for-hire
16 site and a customer who were negotiating the murder of
17 Francisco Cordero and Christina Cordero in exchange for
18 approximately \$16,000 in Bitcoin.

19 Q What is Bitcoin?

20 A Bitcoin is a form of cryptocurrency.

21 Q In those communications you previously referenced, did
22 they depict the actual transfer of approximately \$16,000 in
23 Bitcoin?

24 A They did. The communication -- in the communications
25 they agreed upon a price for the job and the money was

1 transferred.

2 Q What did the FBI do upon receiving that information?

3 A The FBI conducted financial and blocked chain analysis
4 that led us to a Coinbase account for the customer in that
5 transaction, and a further analysis showed that Coinbase
6 account belonged to the defendant.

7 Q What is Coinbase?

8 A Coinbase is a cryptocurrency exchange platform.

9 Q And were there IP addresses that were associated with
10 the Coinbase account that were relevant to the investigation?

11 A Yes, there were.

12 Q And what did they depict?

13 A The IP addresses -- the analysis on the IP addresses
14 showed an account belonging to the defendant registered to
15 the defendant's home address.

16 Q And was that residence -- or that address, rather, 2929
17 South 6500 West, Cedar City, Utah?

18 A That's correct.

19 Q Where is Cedar City, Utah?

20 A It's in Southwest Utah.

21 Q Did you obtain a search warrant for that residence?

22 A Yes, I did.

23 Q How did you go about obtaining that warrant?

24 A I swore out the warrant with U.S. Magistrate
25 Judge Paul Kohler out of Saint George, Utah.

DeCarr - Direct

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1 Q And what did that warrant authorize you to search for?

2 A That warrant authorized me to search for evidence of
3 the crime, including electronic devices at the defendant's
4 residence and on the people at the residence as well.

5 Q When you say "evidence for a crime," which crime was
6 specifically you were searching for evidence of?

7 A Would be the federal crime for murder-for-hire.

8 Q How would you describe the residence?

9 A The residence is a 5800 square foot, seven-bedroom
10 house sitting on a 20-acre plot of land.

11 Q I'm going to show you what's been previously admitted
12 into evidence as Government Exhibit 2.

13 Do you recognize what is depicted in Government Exhibit
14 2?

15 A Yes, I do.

16 Q How do you recognize it?

17 A That's the defendant's residence in Southwest Utah.

18 Q How were those photographs taken?

19 A Those photos were taken by an FBI airplane.

20 Q And the search warrant was executed on October 27th of
21 2021?

22 A That's correct.

23 Q Were you part of the team that executed the search
24 warrant?

25 A Yes, I was.

1 Q Approximately, what time do you have as the execution
2 of the search warrant?

3 A I knocked on the door at approximately 6:48 a.m.

4 Q Who was with you at the door at that time?

5 A Other members of law enforcement.

6 Q Was it all federal law enforcement?

7 A No.

8 Q Fair to say it was agents from FBI, other federal
9 agencies and some local law enforcement agents as well?

10 A That's correct.

11 Q Approximately how many of those agents were with you at
12 the door at that time?

13 A I would say it was approximately 14, including myself
14 at the door at that time.

15 Q What were the other members of the team wearing?

16 A Members of the team wore their bulletproof vests and
17 their agency-issued jackets. It was cold that morning, so
18 many people had jackets or sweatshirts as well.

19 Q Fair to say every member of the team was armed with
20 some kind of firearm?

21 A For the individuals at that door at the time, yes.

22 Q What kinds of firearms did the agents have in their
23 possession?

24 A A combination of handguns or pistols and long guns.

25 Q How were you equipped at that time?

DeCarr - Direct

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1 A I had a pistol.

2 Q Was anyone wearing riot gear, to your understanding?

3 A No.

4 Q What is your understanding as far as what riot gear
5 consists of?

6 A Riot gear would consist of helmets with visors,
7 shields, fixed batons, possibly gas masks. Other tools used
8 to control large, usually unruly crowds.

9 Q Fair to say that's a whole nother level of protection
10 compared to what --

11 THE COURT: Move the mic a little closer; would
12 you?

13 Q Fair to say that's a level of protection exceeding what
14 the individuals at the door with you are wearing?

15 A That's correct.

16 Q What happened after you knocked on the door of the
17 residence?

18 A After I knocked on the door at the residence, the
19 defendant came to the door, he answered the door. I
20 identified myself and informed him we had a search warrant
21 for the residence.

22 Q Was the door breached at any point before the defendant
23 answered it?

24 A No.

25 Q What was the defendant's demeanor when he opened the

1 door and answered it?

2 A Calm, composed.

3 Q Just for the record, do you see the defendant currently
4 in court right now?

5 A Yes, I do.

6 Q Can you just identify where he is seated and what he is
7 wearing?

8 A Yes. The defendant is sitting at the table over there
9 wearing orange.

10 MR. O'HANLON: Identifying the defendant for the
11 record.

12 THE COURT: So noted.

13 Q What happened next after you announced yourself and
14 told the defendant that you had a warrant to search the
15 house?

16 A The defendant stepped aside and members of my team,
17 including myself, entered the house.

18 Q With regard to the weapons that were possessed by the
19 members of the team, how were the members of the team
20 handling those weapons based on your observation?

21 A Based upon my observations, the weapons were being
22 handled in a term that we use as low ready.

23 Q What does low ready mean?

24 A Low ready is when you have your weapon in your hand but
25 it's not pointed at anybody. It's pointed typically towards

1 the ground about 30- to 45-degree angle.

2 Q At any point did you see a gun actually pointed at any
3 person in the house?

4 A No.

5 Q Was there any shouting that accompanied the agents'
6 entrance into the house?

7 A No. None.

8 Q Would you agree that you stormed the house?

9 A No.

10 Q In fact, how did the members of the team actually make
11 entry into the house based on your observation?

12 A Walked.

13 Q What is the first step in executing a residential
14 search warrant?

15 A The first step in executing the warrant would be to
16 secure the residence that we are planning to search.

17 Q And what does securing mean?

18 A Securing would mean that members of the entry team, the
19 team that goes into the house to secure it will break off
20 into smaller groups and essentially what they are looking for
21 is people and to create -- what they are trying to accomplish
22 is making the space safe by looking for people and preventing
23 destruction of evidence.

24 Q And towards that goal, were all the inhabitants of the
25 residence brought to a central location?

1 A Yes, they were.

2 Q Fair to say there were, you know, over 10 children and
3 at least four adults in the house?

4 A That's correct.

5 Q And all of them, aside from the defendant, were brought
6 to that central location that you previously referenced?

7 A That's correct.

8 Q Was that the living room of the residence?

9 A Yes.

10 Q I'm going to show you what's been previously marked and
11 admitted into evidence, Government Exhibit 3. Do you
12 recognize Government Exhibit 3?

13 A Yes.

14 Q How do you recognize it?

15 A Looks like a sketch of the defendant's first floor.

16 Q Okay. Can you identify, just for the record, where
17 the -- the front door that you entered along with the team is
18 on Government Exhibit 3?

19 A Bottom center.

20 Q Is it labeled "front door"?

21 A Yes, it is.

22 Q And when you referenced the living room, where is that
23 on Government Exhibit 3?

24 A That would be in the upper right-hand corner. Room F.

25 Q Once the residence was secured, what did the members of

1 the entry team do with their firearms that you observed?

2 A Once the residence was secured, all the law enforcement
3 officers I observed had their weapons holstered, they put
4 them in their car. Or if they had a rifle and they hadn't
5 put it away yet, they had it just considered slum, which
6 means it's usually just laying against their chest. They
7 don't even have their hand on the pistol grip.

8 Q In other words, they were no longer handling the
9 weapons at the low ready position; correct?

10 A Correct.

11 Q What happened next from your perspective?

12 A What happened next was during the course of securing
13 the residence, I walked into the living room and I wanted --
14 I asked if all children, people were accounted for. At that
15 time I was told that they were not and that there were still
16 some children upstairs. So I went upstairs to inform the
17 individuals that were searching that there could be some
18 children still in their beds. After that was done, those
19 children were located, they were brought down to their family
20 in the living room. After I made sure everybody was in the
21 living room, I then went to the defendant and I asked him if
22 he had anywhere he would like to talk or if he would like to
23 talk to us at all.

24 Q And where was the defendant at that point?

25 A The defendant was standing near the front door still.

1 Q What were the other agents or other members of the
2 entry team doing at that point?

3 A At that point, once the residence was secure, people
4 had other responsibilities, which they went about doing or
5 preparing to do, which some of that would have been
6 searching, taking photographs, preparing for any interviews
7 that need to be conducted, and various other tasks, like,
8 conducting the sketch.

9 Q I want to show you what's been marked as Government --
10 admitted into evidence as Government Exhibit 1.

11 MR. O'HANLON: Permission to approach, your Honor?

12 THE COURT: You may.

13 Q Special Agent, do you recognize what I handed to you as
14 Government Exhibit 1?

15 A Yes, I do.

16 Q How do you recognize it?

17 A This is a copy of the DVR footage from the defendant's
18 residence that we seized.

19 Q And please explain for the Court what is the DVR
20 footage?

21 A The defendant had a number of cameras secured around
22 his residence. The DVR captured eight of those cameras as it
23 recorded over a period of time.

24 Q And have you reviewed the contents of that drive,
25 Government Exhibit 1?

1 A Yes.

2 Q And are they accurate copies of what was taken off of
3 the residence's DVR, based on your review?

4 A Yes.

5 Q Thank you. I'm going to play what is marked as
6 Government Exhibit 1B, which is, I'll represent to the Court,
7 Channel 6, which depicts the living room of the residence.
8 It's playing from the 6:52:32 mark.

9 While it plays, Special Agent, can you just describe
10 what you are currently seeing depicted on the video?

11 A This is the living room at the defendant's residence.

12 Q Can you tell who is currently depicted at the top of
13 the frame?

14 A I can't be sure, but it's members of law enforcement
15 and it looks like a member of the family at the residence.

16 Q And at the 6:52 mark, how much time has elapsed
17 approximately since you entered the house at this point?

18 A Approximately four minutes.

19 Q Now what do you see depicted?

20 A The residence, at least in this space, at the very
21 least was secured. These members appear to be conducting a
22 search of the space so that we can give the space back to the
23 family so they can come sit. It was too cold outside to have
24 people outside.

25 Q In terms of weapons that you can observe, what do you

1 observe?

2 A Combination of long guns and handguns. But I observed
3 no hand guns in anyone's hand and no one is handling their
4 long gun. It's just slung across their chest.

5 Q We are at the 6:54 mark. What's happening now?

6 A Members of the family are re-entering the living space.

7 Q Is it specifically the defendant's children?

8 A That's correct.

9 Q Are there any guns being pointed at them?

10 A No.

11 Q For the record, are you able to observe the demeanor of
12 the children?

13 A I can, yes.

14 MR. SCHILLINGER: Objection, Judge. It's calling
15 for speculation as to what the children are thinking or
16 doing.

17 THE COURT: Sustained. Move on.

18 Q What is happening at the -- this is now the 6:55 minute
19 mark.

20 A Members of the family are sitting down. I just walked
21 into the room.

22 Q And what are you doing at this point?

23 A I am trying to account for all the people in the house.

24 Q And is there a little girl asking you a question at
25 this point?

1 A Yes, there is.

2 Q What was she asking about, if you recall?

3 A I do not recall what she asked me.

4 Q Do you observe the defendant's wife at this point?

5 A Yes.

6 Q What is she doing in the video and how is she dressed?

7 A She seems to be dressed in what I would describe as
8 pajamas and she appears to be accounting for all the family
9 members as well.

10 Q And I will pause it at the 6:55:47 mark.

11 Let's get back to what you previously testified to
12 which was approaching the defendant and asking to speak with
13 you. Can you describe in detail how you -- where the
14 defendant was and how you conveyed that request?

15 A Yes. The defendant was still by the front door. As
16 you enter the front door, he would have been off to the left.
17 I approached the defendant after all the people were
18 accounted for and everything was secure and I asked him if he
19 would be willing to speak with us, to which he said that he
20 would. I asked him if he would have anywhere comfortable in
21 the house or anywhere that he would like to talk. And if
22 not, we have a vehicle outside we can go sit in.

23 Q And how did the defendant react to that?

24 A He was calm and composed. He said he would go sit in
25 the car and talk to us.

1 Q At any point, did the defendant attempt to speak with
2 his family before leaving the residence?

3 A No.

4 Q Was the defendant able to leave the residence
5 immediately with you at that point?

6 A No.

7 Q What had to happen first?

8 A The defendant wasn't wearing any shoes. He needed to
9 get some shoes.

10 Q And so what did he do?

11 A He went up and got shoes.

12 Q And then what happened?

13 A Well, while he was going to get shoes, I went out to
14 the vehicle I had offered for us to speak in, and I took off
15 my gear, I started the recording, and then I came back into
16 the house.

17 Q Did you have a vehicle that was prepared for the -- in
18 the eventuality that the defendant would agree to speak with
19 you?

20 A We did. We had a vehicle in mind, yes.

21 Q What kind of vehicle was it?

22 A It was a Chevy Tahoe we rented from the Las Vegas area.

23 Q How big is that vehicle?

24 A It's a -- I would consider it a large SUV. It's three
25 rows with plenty of room.

1 Q Was it an FBI designated vehicle with markings and
2 such?

3 A No. It was a rental.

4 Q Can you describe how the defendant entered the vehicle
5 to speak with you?

6 A Yes. When I came back into the house and told him we
7 could go out to the vehicle to speak, he agreed. So I walked
8 out first, he walked out behind me, we approached the vehicle
9 from the front. The vehicle was parked off to the left. So
10 we approached it from the front, said he can go ahead and get
11 in. He walked up to the driver's side second door, so the
12 middle row, and opened the door and got in.

13 Q Did you put hands on him at any point while you were
14 traveling from the house to the car?

15 A No.

16 Q Was he in handcuffs?

17 A No.

18 Q Did you follow behind him to make sure that he got into
19 the car?

20 A No. I went to the other side of the vehicle.

21 Q So you didn't open the door for him?

22 A No.

23 Q Did you place him in the vehicle in any fashion?

24 A No.

25 Q Did the doors lock behind the defendant?

1 A No. The doors were not locked.

2 Q Did you threaten him in any way to ensure that he got
3 into the vehicle?

4 A No.

5 Q Were there any agents guarding the vehicle, like
6 stationed outside it on either side?

7 A No.

8 Q At any point during the ensuing interview with the
9 defendant, were there agents stationed outside the vehicle?

10 A No.

11 Q I just want to direct you real quickly to what's
12 currently depicted, which is Government Exhibit 3.

13 When you say the foyer of the residence, where is that
14 on Government Exhibit 3?

15 A I would consider the foyer area to be just inside
16 the -- it would be the space utilized just inside the front
17 door.

18 Q Okay. Fair to say it was the area between what's
19 marked as front door and basement stairway?

20 A Yes. It's not depicted here, but there is a hallway on
21 that -- passing between what appears to be, like, the laundry
22 room area and the basement stairway. That hallway leads into
23 the kitchen. So, like, there's -- it's not a pass-through
24 space.

25 Q All right. Getting back to the interview, after the

1 defendant gets into the vehicle, what happens next?

2 A After the defendant gets into the vehicle, I got into
3 the vehicle shortly after that and we -- and then shortly
4 after that, Chris Andersen got into the vehicle.

5 Q And Chris Andersen is another special agent?

6 A Yes.

7 Q When you first started speaking with the defendant, did
8 you tell him that he was not under arrest?

9 A That's correct.

10 Q And did you tell him that he was not required to speak
11 to you?

12 A That's right. I said he had no obligation to speak
13 with us.

14 Q Did you offer him anything?

15 A Offered him some water.

16 Q How would you characterize the first hour and a half of
17 the interview that took place in the vehicle with yourself,
18 Chris Andersen and the defendant?

19 A The first hour and a half had some direct questions as
20 far as Internet usage and devices, but the vast majority of
21 that first hour and a half is what I would describe as
22 rapport-building or small talk.

23 Q Did you confront the defendant at any point during that
24 initial hour and a half with the evidence you had against
25 him?

1 A No.

2 Q When did you first confront the defendant with the
3 evidence that you had in the case?

4 A Approximately one hour and 38 minutes into the
5 interview.

6 Q And what form did that take?

7 A I'm sorry. Can you repeat the question?

8 Q Sure. How did you confront him? What evidence did you
9 confront him with?

10 A I confronted him with a number of exhibits that I had
11 prepared from our investigation to show him the evidence that
12 we currently had.

13 Q And does that include the communications from the
14 darknet site?

15 A That was one of them, yes.

16 Q How soon thereafter, in other words, after you showed
17 him the evidence that you had, did he admit his involvement
18 in the murder-for-hire scheme?

19 A It took me approximately six minutes or so to present
20 all of the evidence we had and the defendant confessed almost
21 immediately.

22 Q Given the evidence that you had, was there a reason why
23 you didn't arrest the defendant immediately upon meeting him
24 at his door?

25 A Yes. We didn't have probable cause to believe that the

1 defendant was the perpetrator.

2 Q Did you have an arrest warrant for a defendant at that
3 point?

4 A No.

5 Q Were there other individuals who might have had access
6 to the electronic devices in the residence based on what you
7 knew at that point?

8 A When we knocked on the door, we knew there to be three
9 other adults that could have had access to those devices and
10 that Internet.

11 Q Is there a reason why you didn't Mirandize the
12 defendant immediately when he got into the car? I should
13 just say the Chevy Tahoe.

14 A He was not in my custody. He willingly and -- walked
15 to the vehicle to talk to us. He seemed curious. He wanted
16 to talk to us. He said he wanted to know what was going on
17 and told him he was not under arrest, had no obligation to
18 talk to us. He wasn't in our custody.

19 Q And you had not arrested him at that time; correct?

20 A Correct.

21 Q Did you eventually Mirandize him after approximately
22 two hours of interview?

23 A Yes.

24 Q Okay. And why did you Mirandize him at that point?

25 A At that point in the interview, the defendant had

1 confessed to a federal crime. Further, we had explained to
2 him that he would need to go before a judge. So at that
3 point, it was the right thing to do to Mirandize him.

4 Q At that point, did you believe he was in your custody?

5 A Yes. Should he try to leave that interaction at that
6 point, I would have detained him.

7 Q You previously testified about the DVR footage which
8 has been admitted in whole as Government Exhibit 1 and a
9 portion of it has been played already.

10 Did you have a chance to review all of the eight
11 channels of footage from that morning?

12 A Yes, I did.

13 Q Did that include reviewing footage of that camera that
14 you previously -- Channel 6 that was previously testified to
15 depicting the living room?

16 A Yes.

17 Q At any point in your review of that footage, do you see
18 an armed agent standing in front of any of the living room
19 windows?

20 A No.

21 Q Were any children prevented from looking out the
22 windows by a law enforcement agent?

23 A No. Not that I saw.

24 Q Did you ever see a gun brandished or pointed at any of
25 the residents on that camera?

1 A No.

2 Q Did you observe any upset children in the video?

3 A I did. I observed one.

4 Q Approximately at what point did you observe that?

5 A It was around when law enforcement first entered the
6 house the first few minutes, there was a child that appeared
7 to be upset and was consoled by another member of the family
8 at the kitchen table.

9 Q Do you remember the gender of the child or the
10 approximate age that you observed?

11 A Appeared to be a male child, young. A few years old,
12 maybe.

13 Q What are the residents who are depicted in the living
14 room on the video that you observed or that you reviewed,
15 generally speaking, what are they doing during the several
16 hours of footage that you reviewed?

17 A They appeared to be carrying on about their day albeit
18 in a space smaller than they are probably used to. But they
19 were carrying on about their day; reading, getting up, moving
20 around, getting some drinks of water. Whatever they needed
21 to do about their day. Continue with school.

22 Q Did you also review one of the channels which depicted
23 the driveway of the residence?

24 A Yes.

25 Q At any point, does that video depict the driveway being

1 entirely blocked by law enforcement vehicles?

2 A No.

3 Q If someone had wanted to, would they have been able to
4 drive a vehicle away from the house and off the property?

5 A Yes.

6 MR. SCHILLINGER: Objection, Judge. It's
7 speculation, again. If someone wanted to.

8 THE COURT: Yeah. Sustained. Answer may be
9 stricken. Next question.

10 Q If you had to drive the vehicle and leave the residence
11 for some reason, would you have been able to do so?

12 A Yes.

13 Q Did the driveway camera depict the Chevy Tahoe where
14 the interview was taking place?

15 A It did.

16 Q To what extent are law enforcement members depicted in
17 that video around the -- in the driveway area while the
18 interview was taking place?

19 A They are not.

20 Q What were the other members of law enforcement doing
21 who were not part of the initial entry team during the
22 execution of the search warrant?

23 A Can you repeat the question, please?

24 Q Were there members of law enforcement present at the
25 residence who were not part of the initial entry team?

1 A That's correct, yes.

2 Q What was their role in the execution of the search
3 warrant?

4 A We had a team that was going to do forensic reviewing
5 of various electronic devices we expected to find. We also
6 had a couple of victim specialists, and we had an operational
7 support technician.

8 Q And are they -- do they have any reason to be going
9 back and forth to their vehicles while the search warrant was
10 being executed and the defendant was being interviewed?

11 A It may have.

12 Q What were some of those reasons why they would be going
13 back and forth?

14 A Could be a number of reasons. But mostly just to get
15 whatever they may need to do their job.

16 Q Were electronic devices seized from the residence?

17 A Yes.

18 Q And were they then taken outside of the residence --

19 A Yes.

20 Q -- and collected?

21 A Yes.

22 MR. O'HANLON: I have no further questions,
23 your Honor.

24 THE COURT: All right. Mr. Schillinger, you may
25 examine.

1 MR. SCHILLINGER: Thank you, Judge. Could I have
2 one minute to organize my exhibits.

3 THE COURT: You may examine from the podium, if you
4 wish.

5 CROSS-EXAMINATION BY MR. SCHILLINGER:

6 Q Hi, Agent DeCarr. Agent, I'm Eric Schillinger. Nice
7 to meet you.

8 A Good morning.

9 Q I represent Mr. Pence. I do have some questions for
10 you about the events at Mr. Pence's home in Utah on that day
11 in October of 2021.

12 Since it's up on the screen, I'll just start with
13 what's in evidence as Government Exhibit G-3. Can you see
14 that on the screen?

15 A Yes.

16 Q And just, if you know, it indicates there is a living
17 room and a breakfast nook, and it's a general diagram of the
18 first floor of the house. That's right?

19 A Yes.

20 Q Okay. And the living room that's indicated here, it's
21 Room F; is that right?

22 A Yes.

23 Q If you know, is that the location that that camera --
24 that footage was acquired from?

25 A Yes.

1 Q Okay. And then Room G, is that a different room?

2 A I believe it's separated by some walls.

3 Q If you are looking in the camera footage, that's the
4 room that's through the door sort of to the -- on the left
5 side of the camera footage; is that right?

6 A Yes.

7 Q Okay. Now can you tell me -- there was an agent with a
8 firearm stationed in Room G. That's true?

9 A I don't know if that's exactly true. You said
10 stationed?

11 Q Was there an agent with a firearm in Room G?

12 A At some time there was --

13 MR. O'HANLON: Objection. Overly broad.

14 THE COURT: Stand up.

15 MR. O'HANLON: Vague as to time, overly broad.

16 THE COURT: Yeah. Be more specific.

17 Q Agent, when you first arrived at the property after you
18 gained entry, between 7:48 and 7:30 a.m., was there an agent
19 stationed in Room G?

20 A Between 6:48 a.m. and 7:30 a.m?

21 Q Yes.

22 A We didn't have agents stationed in rooms. Agents went
23 through rooms.

24 Q Okay. Did you ultimately place anyone at the bottom of
25 the stairway, for example, guarding the area?

1 A I did not, no.

2 Q Okay. Was there anyone at the bottom of the stairway?

3 A We don't guard doorways and stairways necessarily.

4 Q Okay. There were a total of 21 agents who came to the
5 property that day. Is that right?

6 A No.

7 Q No? How many agents came to the property?

8 A I would say approximately 16.

9 Q And in addition to FBI agents, was there anybody else
10 there?

11 A Well, it wasn't 16 FBI agents. It would have been 16
12 law enforcement officers of various agencies, federal and
13 state or local.

14 Q Okay. So your testimony is that there was a total of
15 16 law enforcement people there?

16 A Yes.

17 Q Okay. Do you remember executing a report on
18 November 1, 2021, that would be a search warrant return. Do
19 you remember doing that?

20 A I would have to be refreshed.

21 MR. SCHILLINGER: Judge, can I approach the
22 witness?

23 THE COURT: You may.

24 Q Agent, I am going to show you what's been admitted into
25 evidence as Defendant's Exhibit B. Can you take a look at

1 that and tell me if you recognize it?

2 A Yes, I do.

3 Q What is that?

4 A Well, it's not my document. This was created by
5 someone named Kevin Mortensen. And this is a document to
6 which Kevin Mortensen lists the people that arrived. It
7 says, "The following individuals were present in various
8 capacities for the execution of search warrant."

9 Q Okay. And you're the case agent on this case; right?

10 A Yes.

11 Q That means you are in charge of managing the case
12 generally?

13 A The case, yes.

14 Q And this is a document that you would have seen before
15 today's testimony?

16 A Oh, yes. I've seen this.

17 Q Does that indicate how many people were at the
18 residence?

19 A Twenty-one.

20 Q Twenty-one. Okay. Could I have that back. Thank you.
21 So now I'll ask you again. Your testimony a few
22 minutes ago was that there was maybe 16 people. There was
23 more people than that, though; wasn't there?

24 A There were 16 law enforcement officers and 5 civilians.

25 Q Okay. So a total of 21 people came to the residence

1 that day for the execution of the search warrant?

2 A At some point or another, 21 people arrived at the
3 residence. Not all law enforcement. Some were civilians
4 operating in non-law enforcement capacities.

5 Q Now, your testimony is that you arrived at
6 approximately 6:48 a.m., is I think when you gained entry
7 into the house; is that right?

8 A It's when I knocked on the door, yes.

9 Q Obviously, you arrive at the property maybe only a few
10 minutes before that; is that right?

11 A Yes.

12 Q How many vehicles were driven to the property; do you
13 know?

14 A I don't.

15 Q Okay. Was it more than 10?

16 A I can't be sure. It sounds like it would probably be
17 more than 10.

18 Q Do you think it was more than 15?

19 A I can't be sure.

20 Q Okay. And these vehicles were a combination of
21 FBI-owned vehicles, rented vehicles and maybe local law
22 enforcement vehicles?

23 A Yes.

24 Q And many of them had, you know, flashing, you know, law
25 enforcement-style alert lights and things?

1 A Not many, no. One or two.

2 Q Okay. Now, it was your testimony you drew some
3 distinction between riot gear and the equipment that was used
4 in this search warrant execution during your direct
5 testimony. That's true?

6 A Yes.

7 Q In your direct testimony, you mentioned -- did you have
8 some experience in the military? Did I catch that?

9 A No. No. I was a police officer at the Pentagon.

10 Q I'm sorry. It was a civilian police officer role at
11 the Pentagon?

12 A That's right.

13 Q Okay. I misunderstood that as military police. Excuse
14 me. And you also worked for state police?

15 A I did.

16 Q And then now the FBI?

17 A Yes.

18 Q You have some substantial training with respect to this
19 type of equipment?

20 A Not specifically to riot gear, but I was trained on a
21 low level for that.

22 Q It sounds like you have some training to be able to
23 identify the difference between riot gear and what -- the
24 equipment you used. That's correct?

25 A Yes. That's correct.

1 Q And you testified that there wasn't any riot shield or
2 anything like that. Is that true?

3 A That's correct.

4 MR. SCHILLINGER: Okay. Can I approach the
5 witness, Judge?

6 THE COURT: You may.

7 Q I am going to show you what is in evidence as
8 Defendant's Exhibit H. Can you take a look at that. It's a
9 screenshot from the video that you had testified on direct
10 that you have reviewed the whole thing.

11 A Yes.

12 Q Okay. And I am going to direct your attention to the
13 center top portion of that screenshot. On that image, is
14 there an individual carrying a riot shield?

15 A Yes. No. Correction. Sorry. There's a shield. It's
16 not a riot shield.

17 Q Okay. It's a shield. What's the difference between a
18 riot shield and a shield?

19 A So this particular shield is actually a bulletproof
20 shield. It's used -- we bring up breaching tools to the
21 front porch of any house or any door we are going to access.
22 Should someone decide to have a confrontation at the door,
23 typically what we would have is the shield to protect us.

24 Q And there is other safety equipment you would also wear
25 at the door when you may be breaching into a residence. Is

1 that true?

2 A This wasn't being used at the door. I knocked on the
3 door with no shield. It was set on the porch.

4 Q Is it your testimony that that door -- that that shield
5 was never brought to the front of the door?

6 A No. That shield and breaching tools were brought to
7 the front door. If you watch the video, you can see
8 breaching tools being carried up as well. We bring those up,
9 we set them near the door in case we need them, but we did
10 not need them.

11 Q And when the door was opened, those tools were there at
12 the front door. Set near the door, perhaps, but there at the
13 front door.

14 A They were not set near the front door because I was
15 standing near the front door. I can't testify as to where
16 they were set by whoever set them down.

17 Q They would have been visible to anyone opening the
18 door. Is that true?

19 A I can't speak to that. I had my back turned to the
20 people behind me. I was the first person in line.

21 Q Your testimony was that no one was wearing helmets. Is
22 that correct?

23 A That's correct.

24 Q In addition to your affidavit, have you reviewed the
25 other agents' affidavits in this case?

1 A I did.

2 Q And you understand that there was testimony that in the
3 affidavits that at least one to three other agents were
4 wearing helmets. Do you remember that?

5 A No.

6 MR. O'HANLON: Objection. Relevance. Asking about
7 the testimony of other witnesses.

8 THE COURT: Overruled. Go ahead. He can answer.

9 A No, I don't remember that.

10 Q Okay. Now, you personally, you were wearing a
11 bulletproof vest?

12 A Can you repeat that?

13 Q You personally, you were wearing a bulletproof vest --

14 A Yes.

15 Q -- at the time that you breached the door? And you
16 testified that everyone was armed. That's right?

17 A The people at the door were armed, yes, at the time
18 that we knocked.

19 Q I think you said there was 14 agents who were at the
20 door?

21 A Approximately.

22 Q And each one of them was carrying a firearm?

23 A Yes.

24 Q You testified about the low ready position. Can you
25 describe again what the low ready position is?

1 A The low ready position, it's not an exact thing but
2 what it is is essentially members at their discretion will
3 have their weapon out and they would have the weapon not down
4 by their side, but it's not pointed at anybody. So it's
5 mostly pointed at the ground. I would say it's about a 30-
6 to 45-degree angle from the ground.

7 Q And the purpose of having it in the low ready position
8 versus slung or holstered, I think those were other terms you
9 used, right?

10 A That's correct.

11 Q Slung, what does that mean?

12 A That would be a way to describe a rifle that someone is
13 carrying that they are not handling with their hands.

14 Q Yeah. It's like a strap and they've got it around
15 their neck or something, right?

16 A That's right.

17 Q And obviously a holster, that's like where your pistol
18 goes on your hip, right?

19 A That's correct.

20 Q Not in your hands. So low ready, that means it's in
21 your hand?

22 A Yes.

23 Q And low ready means that you can -- well, let me ask
24 you. What is the purpose of having it in the low ready
25 position versus being holstered or slung?

1 A The purpose of it, it's just a little bit quicker in
2 case you need it.

3 Q If you need to do what with it?

4 A Use it.

5 Q And by using it, you mean fire it; correct?

6 A You don't always fire, but, yes. In case I need to
7 pull my weapon out, it's faster. It's already in my hand.

8 Q So during the initial interaction with the Pence
9 family, everyone had their guns in their hands ready to use
10 them. That's your testimony; right?

11 A I can't speak to everyone having their gun in their
12 hand. I was in the front of the line.

13 Q You had your gun in the low ready position.

14 A I did not have my gun in the low ready position. I had
15 my gun at my side.

16 Q And your testimony just now was that the other agents
17 who were involved in the initial breach of the door, they had
18 their weapons in the low ready position. That was right?

19 A They would have. Should they have chosen to holster up
20 sooner or change it to a different position, I couldn't have
21 been aware of that.

22 Q Now, you mentioned breaching tools. Could a breaching
23 tool be a sledge hammer? Is that what you mean by that?

24 A It could be.

25 Q Do you remember a sledge hammer being brought to this

1 residence?

2 A Not specifically.

3 Q Okay. You testified that you came into contact with
4 Mr. Pence. Just immediately he opened the door. That's
5 right?

6 A Yes.

7 Q And when you gained entry, you were able to go in. He
8 didn't resist you entering the building. That's right?

9 A That's correct.

10 Q And you addressed with Mr. Pence that you had interest
11 in speaking with him. That's true?

12 A Not immediately. But eventually, yes.

13 Q Well, how much time lapsed between when you entered the
14 residence and when you asked him if he would speak with you?

15 A Few minutes.

16 Q Just minutes. It wasn't hours and hours?

17 A No.

18 Q Okay. And you testified on your direct that he didn't
19 have his shoes on. That's right?

20 A That's correct.

21 Q And you said he had to go upstairs to get his shoes?

22 A He did.

23 Q He did not go upstairs unaccompanied; did he?

24 A I don't believe so, no.

25 Q Agents went with him, right?

1 A I believe so.

2 Q And those agents were armed. That's correct?

3 A Yes.

4 Q Now, your testimony is that 14 agents came into the
5 property, right? They were able to gain access?

6 A Approximately.

7 Q And those agents then would have fanned out around the
8 house, right, to secure it?

9 A They would have broken off into smaller groups to
10 secure the residence, yes.

11 Q I'm just going to show you what's been --

12 MR. SCHILLINGER: If I can approach, Judge?

13 THE COURT: You may.

14 Q -- what's been admitted as Defendant's Exhibit I.
15 Could you take a look at that?

16 A Yes.

17 Q That is a screenshot from the security footage. And
18 that's also from Channel 6 in what's been admitted into
19 evidence as Defendant's -- or, excuse me, Government's
20 Exhibit 1. Are you in that image?

21 A Yes.

22 Q And how many law enforcement agents are in that image
23 with you?

24 A I can see what appears to be three others.

25 Q And that is in the living room area in the Pences'

1 house. That's true?

2 A There is two others in the area and it looks like there
3 may be one more in the kitchen.

4 Q And at this stage, what you are doing is you are
5 securing the residence and you are -- I'm sorry, for lack of
6 a better word, corralling the rather large family and getting
7 them all into the same room. That's true?

8 A We are accounting for all the people in the house.

9 Q And, generally speaking, for a myriad of reasons, you
10 would want all the people to then be in one room or be under
11 your control while you are executing the search warrant.
12 That's right?

13 A Not exactly. Not exactly under our control. We would
14 have them in a controlled space, but we are not controlling
15 the people within that space.

16 Q Well, your testimony on direct was that you engaged in
17 a search of this living room area that's depicted in the
18 image. That's right?

19 A Yes.

20 Q And that was to secure that area and make sure it was
21 safe, right?

22 A Safe and also that there was no evidence, like phones
23 or other items that we were looking to seize before we
24 allowed people to re-enter.

25 Q So you are sort of doing two things. You are looking

1 for evidence that you may seize based on the warrant, right?

2 A Do you have another thing?

3 MR. SCHILLINGER: Let me -- I'm sorry. Let me
4 rephrase that question, Judge.

5 Q So during that search that was depicted on the video in
6 the living room, the first thing you are doing is you are
7 checking for safety. You are making sure that there is no
8 weapons or anything dangerous in that particular room.
9 That's right?

10 A Yes. It's not in this image, but prior to this, there
11 are law enforcement officers who go through this room to make
12 sure there are no people or destruction of evidence occurring
13 and then they moved on. And then after that, to provide a
14 space for the family within the home where it's warm, a small
15 team went through and searched for what we would consider to
16 be evidence in this crime, and when we didn't -- when that
17 was completed, we allowed the family to re-enter the space.

18 Q Right. And there is two purposes for that: One is to
19 look for evidence. And, two, make sure it's safe. Make sure
20 that there are no weapons or anything, right?

21 A There's separate processes.

22 Q Yep.

23 A Right? One is securing the residence to make sure it's
24 safe, and then executing the actual warrant, searching for
25 evidence of the crime is a secondary step. So reversing

1 those.

2 Q Sure. And you engaged in that process and then you
3 collected Mr. Pence's children and his -- and I say
4 "collected." I don't mean to be technical about it. I mean,
5 just that the family was allowed back in that room
6 ultimately, right?

7 A Yes.

8 Q And then they were -- they were in that room for a
9 length of time. That's correct?

10 A Yes.

11 Q They weren't given access to the rest of the house
12 immediately after they were brought in here. They were kept
13 there for many hours. That's true?

14 A I can't know what they were told they can and can't do.
15 It was shortly after this that I left the house and didn't
16 come back in for a while.

17 Q Okay. I'm going to show you --

18 MR. SCHILLINGER: If I can approach, Judge?

19 THE COURT: Yes.

20 Q I'm going to show you what's in evidence as Defendant's
21 Exhibit G. Can you take a look at that? I will take those
22 other ones back.

23 A Sure.

24 Q Thank you.

25 A You're welcome.

1 Q That's another screenshot from the Government's Exhibit
2 1 from the video. That's a channel that is an exterior
3 channel. Do you recognize that video?

4 A Yes.

5 Q And that's just minutes before you actually arrived at
6 the property. Is that true?

7 A Yes.

8 Q Okay. And what's going on in that video?

9 A That appears to be our vehicles driving to the
10 residence.

11 Q Okay. And the lights that are there, it's a dark
12 image, right?

13 A Yes.

14 Q And then you see -- it looks like vehicle headlights.
15 Is that correct?

16 A It does.

17 Q Okay. And that would have been like your vehicle and
18 the other vehicles from the agents who were coming to execute
19 the search warrant?

20 A Yes.

21 Q And that's probably on the main road just as you turn
22 into the driveway. Is that right?

23 A Yeah, it's -- I would say that at least that first
24 vehicle looks like it's turned up the driveway.

25 Q How many vehicles appear in that image?

1 A Would you like me to count them?

2 Q Yeah, if you can.

3 A I can try. Twelve or so.

4 Q In the caravan of vehicles depicted in that exhibit,
5 Defendant's G, are there any vehicles that are not involved
6 in the execution of the search warrant?

7 A I can't be sure, but I don't recall seeing any other
8 traffic on the road at that time.

9 Q Okay. And this is in rural Utah?

10 A Yes.

11 Q And when you drove to the residence, you drove together
12 as a team. Is that fair to say?

13 A Yes. We exited our, what we call a staging location at
14 the same time.

15 MR. SCHILLINGER: Judge, if I can approach again.

16 THE COURT: Yes.

17 Q Agent, I am going to show you Defendant's Exhibit L
18 that's in evidence also. Take a look at that. That's
19 another screenshot.

20 Can you tell me if you recognize that?

21 A I do.

22 Q That is a screenshot from government's first exhibit.
23 That's correct?

24 A Yes.

25 Q Same camera. It's Channel 5?

- 1 A Yes.
- 2 Q And it's just later in the day. Is that correct?
- 3 A Yes.
- 4 Q What is the time on that one?
- 5 A 7:32.
- 6 Q And now the sun has come up, right?
- 7 A It appears so, yes.
- 8 Q And it's just depicting the vehicles that are parked in
- 9 the driveway, some of them. That's correct?
- 10 A Yes.
- 11 Q And some of them probably are not in the frame, right?
- 12 Some of them are stationed around the house in other
- 13 locations?
- 14 A I think that's fair to say, yes. There is actually --
- 15 there's for sure another vehicle not in this frame.
- 16 Q One of the vehicles drove actually right behind the
- 17 house, on the dirt. Is that right?
- 18 A I do not know exactly where another -- I remember
- 19 seeing another vehicle on the DVR camera that was parked. I
- 20 don't know how it was situated on the house.
- 21 Q There are tracks -- only if you know, actually. There
- 22 are tracks in that image. Those tracks were made by a
- 23 government vehicle. Do you remember seeing that in the
- 24 video?
- 25 A It was dark. I remember seeing lights in the camera.

1 Q And vehicles did drive around the house, generally
2 speaking. They encircled the house. Is that true?

3 A I don't know.

4 Q Okay. I'll take that back from you. Thank you.

5 A Sure.

6 Q Let's go back inside, Agent. When you arrived, there
7 was approximately 14 people who were involved in gaining
8 entry to the house. That's true?

9 A Approximately. That's correct, yes.

10 Q Now, it's a very large house, right?

11 A It is.

12 Q Seven bedrooms or something?

13 A Yeah, 5800 square foot.

14 Q And then by chance, there is only one camera that
15 captured what was going on in the house. It's the camera in
16 that one room. That's right?

17 A I don't know if it's by chance. It's how the defendant
18 had the camera situated.

19 Q Fair. The channels, the video that you were able to
20 review, there is only one interior camera that captured
21 anything on the first floor of the house. That's right?

22 A On the first floor?

23 Q Yes.

24 A I think that's fair to say, yes.

25 Q And then on the second floor and the third floor, there

1 weren't any interior cameras. That's correct?

2 A I recall observing cameras in the defendant's office,
3 but they did not come back on the DVR and I did not have any
4 footage of cameras that I could review on the second floor.

5 Q Okay. Now, that Channel 6 that we watched during your
6 direct testimony and we have used screenshots here during
7 your cross, in the living room, that depicts a few agents in
8 the living room and sort of the kitchen area. It's an open
9 area, right?

10 A At what point? It depicts a few agents in the --

11 Q During the video that we watched, during your direct
12 testimony.

13 A Yes.

14 Q You saw four or five agents?

15 A I can't remember the exact number at this point, but,
16 yes, there were a number of agents that had moved through
17 that space.

18 Q So there was easily eight or nine other agents who were
19 at other positions in the house. That's right?

20 A There was approximately 14 individuals in the house, as
21 I said before.

22 Q Now, you have some training with respect to executing a
23 search warrant. That's the case, isn't it?

24 A Yes.

25 Q Probably training through the FBI, right?

1 A Yes.

2 Q And then probably some training with state police
3 before that, right?

4 A Yes.

5 Q And maintaining a secure location is part of the
6 process of executing a search warrant. That's right?

7 A You would have to be more specific.

8 Q Well, you want to make sure that the location you are
9 searching is a safe location. That's correct?

10 A Safe, yes.

11 Q You wouldn't want to have anyone surprise you, act
12 violently or dispose of evidence or anything like that?

13 A Correct.

14 Q And part of keeping that location safe would be to have
15 agents or officers stationed around the area to make sure
16 that nothing is inappropriate that happens. That's correct?

17 A Not necessarily, no.

18 Q Okay. So what do you mean by not necessarily?

19 A So we don't post agents -- there is no template. There
20 is no policy for posting an agent in spaces that no one is in
21 to make sure that no one comes in and does anything to it.
22 Sometimes there are no people in the house.

23 Q I understand that. Nonetheless, say, in the stairwell.
24 You might want to keep an eye on the stairwell to make sure
25 nobody comes down the stairwell with a weapon. Is that fair

1 to say?

2 MR. O'HANLON: Objection. Calls for speculation.

3 THE COURT: Sustained. Next question.

4 Q Agent, how long did it take you to secure the residence
5 from the time you knocked on the door to the time you felt it
6 was secure?

7 A Well, it is a large house and there was approximately
8 14 agents securing the residence. So I don't know the amount
9 of time exactly that it took for the entire residence to be
10 secured. It was at least five minutes, maybe a few minutes
11 more. It's hard to be sure.

12 Q Okay. And once it was secure, that was when you had a
13 conversation with Mr. Pence about speaking with him about
14 your need to talk to him. That's right?

15 A My initiation, my first conversation with the defendant
16 wasn't based on whether or not the house was secure. I
17 wasn't actually in charge of the operation that day. The
18 operation is handled by the local field office. I'm there
19 more or less as a guest to conduct my investigation.

20 Q There was a time, and it was only a few minutes after
21 you had gained entry to the house, that you spoke with
22 Mr. Pence about the need to have a more detailed conversation
23 with him. That's correct?

24 A I asked if he was willing to speak with us, yes.

25 Q And when you asked him that, it was while there was 14

1 agents fanned out throughout his house?

2 A I think that's fair to say, yes.

3 Q And it was while his family was being directed to
4 corral themselves in the one room in the house?

5 A They were moving to the same space, yes.

6 Q And during this period of time, the agents were with
7 his family and also throughout his house with weapons in the
8 low ready position?

9 A I reviewed the DVR footage and it appeared that I
10 didn't actually see anybody with their weapon in the low
11 ready position on the DVR. So I don't think that they were
12 still moving -- once we accounted for all the people, I don't
13 recall seeing anyone with their gun out at that point.

14 Q We agree the DVR only captures one room in the house.
15 Is that true?

16 A That's correct.

17 Q And the DVR, it depicts only a handful of the agents
18 that were involved in executing the search warrant. That's
19 true?

20 A Yes.

21 Q There were many agents who were in the house who were
22 not depicted in the DVR. That's correct?

23 A That's correct.

24 Q And it was your testimony on direct and during cross
25 that when the agents entered the house, their weapons were in

1 the low ready position.

2 A By our policy.

3 Q And it was your testimony that you didn't actually see
4 what other agents did. You know that by policy they would
5 have their weapons in the low ready position. That's true?

6 A To clarify, it wasn't my policy. It's by our training
7 that we would have our weapons in the low ready position.
8 That's a distinction I want to make. But, yeah, they would
9 have in the beginning and then it's discretionary how every
10 individual chooses to understand the situation and move
11 forward with that. Whether or not they holster immediately
12 or they keep their gun out, it's their discretion.

13 Q Now, you testified that Mr. Pence was accompanied
14 upstairs by agents to get his shoes, right?

15 A Yes, he did.

16 Q And you were not one of the agents who accompanied him.
17 That's true?

18 A That's true.

19 Q So you don't have any personal knowledge of what was
20 said to him or what happened while he went up the stairs or
21 was upstairs?

22 A No, I don't.

23 Q You testified during your direct that -- that you had a
24 vehicle in mind that you would engage in your interrogation
25 of Mr. Pence. That's correct?

1 A Yes.

2 Q And that was a state -- well, I'm sorry. It actually
3 turned out it was a rented Tahoe. That's correct?

4 A That's correct.

5 Q I just learned that during your direct. It wasn't
6 actually an FBI vehicle.

7 A No, it was not.

8 Q It's the style of a vehicle, though, that is used by
9 law enforcement commonly around the country. That's true?

10 A The Chevrolet Tahoe?

11 Q Yes.

12 A Yes.

13 Q It was -- did you make a decision to rent a Tahoe
14 specifically?

15 A Not specifically a Tahoe, but a large SUV.

16 Q I mean, it would have been a more interesting effort to
17 engage in the interrogation if it was done in a little
18 economy car, right?

19 A Yeah. That's not comfortable.

20 Q Now, the Tahoe, just to be clear, it's a vehicle that
21 is used by law enforcement. It's a vehicle that we associate
22 with law enforcement. That's true?

23 A I can't speak to what other people associate with law
24 enforcement.

25 Q Have you ever seen a New York -- well, let me ask you,

1 you were a New York State Trooper? That's right?

2 A Yes.

3 Q And New York State Police, for example, operate Chevy
4 Tahoes as police cruisers. That's correct?

5 A Very few.

6 Q And the FBI uses Tahoes as vehicles. That's correct?

7 MR. O'HANLON: Objection. Relevance.

8 THE COURT: Overruled. He may answer.

9 A Can you repeat the question?

10 Q The FBI uses Tahoes as law enforcement vehicles,
11 generally speaking; do they not?

12 A One of many vehicles that we use. There is very few
13 vehicles we don't use.

14 Q You testified that you went out to the vehicle and you
15 took off your gear. What do you mean by your gear?

16 A Took off my vest, and that was about it. And then just
17 pulled my sweatshirt down over my weapon and my belt and that
18 was it.

19 Q So your weapon was exposed when you asked Mr. Pence if
20 he would speak with you. But then when he said, yes, you
21 took off your bulletproof vest and you pulled your sweatshirt
22 down over the gun so it wouldn't be visible. That's right?

23 A I asked if he would be willing to speak with us when we
24 were in the house. I was still wearing my gear at the time.
25 And he had said, yes. And he had said he wanted to speak in

1 the vehicle. So I went out to the vehicle to take my gear
2 off. I pulled my sweatshirt over my gun, as I would do any
3 time, and started the recording.

4 Q Now where did you put your gear?

5 A I believe I put mine in the trunk of the Tahoe.

6 Q And the trunk of the Tahoe, it's like an open vehicle.
7 It's an SUV. So it's a not like it's a closed-off area?

8 A It's open, sure. But you can't see the trunk from just
9 sitting in the vehicle.

10 Q Now, Agent, you executed an affidavit in the papers
11 that were filed in response to our motion. You already
12 talked about that a little bit. That's right?

13 A Yes.

14 Q And in that affidavit, you had indicated that Mr. Pence
15 walked out of his house and walked to the car and voluntarily
16 had gotten in it. That's right?

17 A It's missing some context. But, generally, that's
18 right. I went back to him and told him he can go back out to
19 the vehicle and if you still want to talk with us. We walked
20 outside, I walked first, he walked behind me.

21 Q So you led him to the vehicle.

22 A Yeah. He didn't know what vehicle we were going to.

23 Q Right. He wouldn't. Right. Now, in your affidavit it
24 indicates that he walked out and just got in a vehicle very
25 voluntarily. That's correct?

1 A I think it's -- that's accurate, yes.

2 Q Okay. But, in fact, he wouldn't have known what
3 vehicle to go to. You led him to the vehicle and you got in
4 the vehicle, right?

5 A I walked to the vehicle, he followed me. I showed him
6 what vehicle we were getting in and he got in.

7 Q He didn't get to pick the vehicle. That's right?

8 A Well, he got to pick where he wanted to talk. If he
9 had told me he didn't want to talk in there, we would have
10 found another vehicle. We had plenty of vehicles.

11 Q Agent, you were in the vehicle with Mr. Pence for a
12 total of a little bit over five hours. That's correct?

13 A No. I was -- he was in the vehicle for about five
14 hours. I was not in the vehicle the whole time.

15 Q Thank you. Actually, that's correct. Mr. Pence was in
16 the vehicle for five hours, right?

17 A Other than the one time that he did get out.

18 Q And when he got out, what happened?

19 A He got -- well, it was over four hours. It was after
20 he confessed. He had been Mirandized. And his dogs came
21 outside and they were -- he felt responsible. He got out of
22 the car and was doing whatever a good owner of a dog would do
23 with his dogs. They are not my dogs, I don't know. And I
24 just asked him to sit tight.

25 Q And he got back in the car?

1 A He did.

2 Q Now, for the first hour and a half of the questioning,
3 you described it as rapport building?

4 A Generally speaking, yes.

5 Q And the purpose of building a rapport with the
6 defendant was so that he would speak to you and you were --
7 hopefully, he would ultimately make admissions. That's
8 correct?

9 A The goal is to develop a relationship with someone that
10 you don't really know.

11 Q And the reason for that is because you are
12 investigating what you suspect is criminal conduct and you
13 are trying to obtain an admission. Is that true?

14 A Can you repeat that?

15 Q The purpose of building that rapport is because you are
16 investigating potential criminal conduct and you are
17 hopefully going to obtain an admission. Is that true?

18 A That was the purpose of the conversation in general.
19 Rapport is part of that conversation.

20 Q So it's a first step in an interrogation process.
21 That's correct?

22 A It's a recommended step.

23 Q And it's a step that you engaged in?

24 A Yes.

25 Q And after you built that rapport, but before Mr. Pence

1 was Mirandized, you did confront him about the conduct you
2 believed he had engaged in. Is that true?

3 A That's true.

4 Q And what happened at that point?

5 A When I confronted him with the evidence you are asking?

6 Q Yes.

7 A It was about approximately hour and 38 minutes into the
8 conversation we were having and I confronted him with a
9 number of pieces of evidence and to which he confessed almost
10 immediately.

11 Q And when he did that, he was in the Chevy Tahoe that
12 this had been rented for FBI use. That's right?

13 A Yes.

14 Q And he had been in that car at that point for nearly
15 two hours?

16 A Approximately an hour and 38 minutes. After I had
17 finished presenting the information for six minutes, it was
18 about an hour and 44 minutes when he decided to start
19 confessing.

20 Q And that confession was obtained while there was maybe
21 a dozen FBI agents and other police force entity officers at
22 his house?

23 A Yes.

24 Q And many of them were armed and they were in his
25 residence. That's correct?

1 A Yes.

2 Q And when you initially arrived there, it was dark,
3 right? You arrived very early in the morning?

4 A That's right.

5 Q And during this period of time, Mrs. Pence was not
6 allowed to speak with Mr. Pence. That's right?

7 A Nobody prevented either of them from speaking to each
8 other.

9 Q Do you know that or you just know that you didn't
10 prevent them?

11 A That's correct. I did not prevent them from speaking
12 to each other.

13 Q Okay. Did Mr. Pence have any access to his family?

14 A He didn't ask for access.

15 Q Agent, just a couple more questions. And I think it
16 goes without saying, but so I can be sure I check it off my
17 list, obviously this was contact, you and Mr. Pence, that was
18 police-initiated. You went to his house. You had the
19 intention to have the search warrant and speak with him,
20 right?

21 A Can you repeat that?

22 Q This was police-initiated or law enforcement-initiated
23 contact with Mr. Pence. That's right?

24 A Correct. We went to him. He didn't come to us.

25 Q He didn't call up and say, "Hey, I want to talk to you

1 guys. I'm coming down to the station"?

2 A Correct.

3 Q And with respect to the five-hour block of time in the
4 Tahoe, the information you obtained from Mr. Pence, the
5 relevant admission, it was gleaned before he was Mirandized.
6 That's correct?

7 A What do you mean by "gleaned"?

8 Q He told you he confessed before he was Mirandized.

9 A Yes.

10 Q Okay. And the conversation you had after he was
11 Mirandized, in large part, it bolstered the information that
12 you gleaned beforehand. But the key information was obtained
13 before he was Mirandized. That's true?

14 A Can you rephrase that or repeat that?

15 Q The key information you obtained during that five-hour
16 block was obtained before he was Mirandized?

17 A Yes.

18 Q The admissions were all before Miranda. That's right?

19 A Not all. But, yes, some of them.

20 Q And in fact after he was Mirandized, you didn't
21 immediately cuff him and bring him down to the station and
22 book him. He actually stayed in the car for a few more hours
23 and continued to be questioned. That's correct?

24 A He was not questioned for the full five hours, but he
25 did continue to stay in the vehicle.

1 Q And was questioned throughout that time. Maybe not
2 five hours, but minute-by-minute questioning, but...

3 A Yeah. I would categorize the vast majority -- not the
4 vast majority, but the majority of the five hours as not --
5 as rapport building or small talk even after the confession.

6 Q Now, during the five hours, you were in and out of the
7 vehicle but you were there with him with a large degree of
8 continuity. It wasn't you were there for a minute and then
9 you came back three hours later.

10 A I would say I spent -- of the people that spent time
11 with him that day, the majority of the time was me.

12 Q And the other agents who were involved, again, there
13 was some continuity there. I think the agent that was
14 assisting, he was in the vehicle for many hours with him,
15 also, right?

16 A Yes.

17 Q And that whole conversation, that's one continuous
18 five-hour block, right?

19 A You will have to be more specific. What do you mean by
20 continuous?

21 Q You didn't start the conversation, then end it, and
22 then two weeks later, reach out to Mr. Pence and have another
23 conversation with him.

24 A All of our conversations occurred in a five-hour
25 window.

1 Q Would you agree with me that the pre-Miranda
2 conversation was the one that was the necessary one with
3 respect to getting the information you needed to charge
4 Mr. Pence?

5 A Yes.

6 Q That was -- that was essentially the complete
7 confession. Is that right?

8 A Yes.

9 Q And that was where you got all the details you needed
10 to decide to actually charge him. Is that correct?

11 A It brought us to the level of probable cause at that
12 point, yes.

13 MR. SCHILLINGER: Judge, if I could have just one
14 second, please.

15 (Pause in proceedings.)

16 MR. SCHILLINGER: Judge, thank you. I don't have
17 any further questions.

18 THE COURT: Redirect, if any.

19 MR. O'HANLON: Very briefly, your Honor.

20 REDIRECT EXAMINATION BY MR. O'HANLON:

21 Q Agent DeCarr, during the entire interview with the
22 defendant, did you ever yell at him?

23 A No.

24 Q Did you ever threaten him?

25 A No.

1 Q Did he ever ask to leave the vehicle?

2 A No.

3 MR. O'HANLON: I have no further questions.

4 THE COURT: All right. You may be excused.

5 THE WITNESS: Thank you, your Honor.

6 THE COURT: We are going to take a 15-minute break
7 and we will come back with the next witness.

8 THE CLERK: Court stands for a 15-minute break and
9 short recess.

10 (Recess, 11:15 a.m.)

11 (Open court, 11:28 a.m.)

12 THE COURT: Next government witness.

13 MR. O'HANLON: The government will call
14 Special Agent Chris Andersen.

15 THE CLERK: Good morning, sir. Can you please
16 state your full name for this record.

17 THE WITNESS: Chris Orson Andersen.

18 THE CLERK: Thank you, sir. Please spell your last
19 name for the record, please.

20 THE WITNESS: A-N-D-E-R-S-E-N.

21 THE CLERK: Thank you, sir.

22 C H R I S A N D E R S E N, called as a
23 witness and being duly sworn, testifies as follows:
24 Witness was sworn under oath.

25 THE COURT: Mr. O'Hanlon, you may proceed.

1 DIRECT EXAMINATION BY MR. O'HANLON:

2 Q Good morning, Special Agent Andersen.

3 A Good morning.

4 Q What is your current occupation and assignment?

5 A I'm a Special Agent for the FBI, and I have been
6 assigned to the St. George office of the Salt Lake City
7 division.

8 Q Where is St. George?

9 A St. George is 8 miles north of the Utah-Arizona border.
10 So the very southern part of the western -- western part of
11 Utah.

12 Q Approximately how far is that from Cedar City?

13 A Approximately 35, 40 miles. Probably 40 miles.

14 Q How long have you been with the bureau?

15 A Just over 15 years.

16 Q Taking you back to October of 2021, was that your
17 assignment as well?

18 A Yes, it was.

19 Q And what are your duties while you were assigned to the
20 St. George resident agency?

21 A In the St. George resident agency, we don't have the
22 luxury of specializing, so we work all criminal violations.
23 Everything from terrorism and fraud to violent crimes and
24 complex financial investigations.

25 Q In October of 2021, were you asked to assist with an

1 investigation that was being undertaken by the Albany FBI
2 division?

3 A Yes.

4 Q And was that an investigation of a murder-for-hire
5 scheme?

6 A It was.

7 Q And what role did you play in the investigation going
8 forward from that point?

9 A I was the operational planning agent and I was also
10 assigned a specific role during that operation where I
11 assisted in interviewing Mr. Pence.

12 Q What was your prior experience when it comes to
13 executing and planning search warrants?

14 A I participated in over a hundred search warrants and
15 led dozens of search warrants and other court-ordered --
16 court orders.

17 Q What about interviewing subjects, either targets or
18 subjects in the course of investigations?

19 A Hundreds of interviews of both victims, witnesses and
20 subjects.

21 Q As an operational planner for the execution of a search
22 warrant in this case, the residence involved was 2929 South
23 6500 West, Cedar City, Utah, correct?

24 A That is correct.

25 Q What did the operation planning involve for this

1 particular search warrant?

2 A The operational planning agent, which is the role I
3 served, was primarily responsible for organizing the
4 operation. So everything from making sure that we had the
5 needed resources as well as the physical equipment, any sort
6 of expertise, and just making sure that we had a strategy or
7 a plan that was approved and something that was actually
8 could be safely executed and approved by management.

9 Q When you were planning the execution of this particular
10 search warrant, did you take into account the possibility
11 that a resident might have been armed inside the residence?

12 A We did.

13 Q Do you recall what the basis for that was?

14 A Yes. We had information from one of the
15 witnesses/victims that Mr. Pence likely had a firearm in the
16 home.

17 Q And did that play any role in your planning or
18 organizing of the search warrant execution?

19 A It did.

20 Q What, if any, affect did it have in terms of your
21 planning?

22 A As an operation planning agent, it's very important to
23 make sure that I do whatever I can to make sure that the team
24 executing the warrant is safe and that we have the ability to
25 keep all persons from any sort of hazard that could exist at

1 a home. So absolutely we plan to, if there is potential
2 conflict or possibility for violence and we try to do our
3 very best at planning for that and try to mitigate any sort
4 of risk.

5 Q Fair to say you made sure the members of the team were
6 aware of that particular fact?

7 A Yes.

8 Q Did law enforcement stage before traveling to the
9 residence?

10 A We did.

11 Q And was that at a location in Cedar City?

12 A Yes. I believe it was -- it may have technically been
13 county property but south of Cedar City. A rural area, just
14 off the side of Old Highway 91.

15 Q And you traveled in a convoy, fair to say, to the
16 actual residence?

17 A Yes. For simplicity, making sure everybody arrives at
18 the right place. Normally, in this case we did travel in
19 convoy, observing normal speeds, highway and road speeds, to
20 arrive at the residence.

21 Q At any point, was the -- did you ensure that the
22 driveway to the residence was blocked?

23 A No. That wasn't part of the plan.

24 Q Did you ensure at any point that there were vehicles
25 stationed around the residence?

1 A No. Other than possibly one single unit that was
2 trying to observe activity on the back side of the house, I
3 believe all other vehicles were -- their goal was just to
4 find a place to park.

5 Q Was there any reconnaissance done regarding the outer
6 areas of the property?

7 A Yes. Beforehand we had an airplane do -- take
8 photographs and video of the residence overhead.

9 Q And after you arrived to the property, did any members
10 of the team do a separate reconnaissance around the house?

11 A Other than just securing any of the outbuildings, no.
12 I mean, their goal was just to secure and make sure that that
13 place was safe.

14 Q Were you present with the group of law enforcement
15 agents who were outside the door when entry was initially
16 made?

17 A Yes.

18 Q Do you recall where you were in that group of
19 approximately 14 officers?

20 A I was one of the first two or three people in that
21 line.

22 Q What was your perception of how entry was gained into
23 the residence?

24 A It was done with basically just knocking and
25 announcing. We were able to knock on the door and Mr. Pence

1 came to the door. He understood that we were there for a
2 court order. And before we entered in, he had knowledge of
3 that and so we calmly and were able to peacefully go in
4 without any sort of disruption or property damage.

5 Q Fair to say that the members of the team who were doing
6 the initial entry were wearing body armor underneath their
7 agency-issued jackets when they entered the residence?

8 A Yes. They either were wearing a jacket with
9 identifying information or just their body armor with
10 identifiers on it. But, yes, that's what we wore. That's
11 correct.

12 Q Was anybody wearing riot gear, to your understanding?

13 A Nobody was wearing riot gear.

14 Q What is your understanding of what riot gear is?

15 A Riot gear is full body protection. We are talking
16 hardened protection on the knees and the thighs and on the
17 shins, forearms, shoulders, shields. You know, full helmets
18 and shields on their face, full-length batons, gas masks.
19 There was nobody in our operational group that was wearing
20 any riot gear.

21 Q Based on your observation, how did the members of the
22 team enter the residence once the defendant opened the door
23 and the team entered?

24 A We walked into the residence and began to secure the
25 property one room at a time.

1 Q From what you could observe, how were the members of
2 the team carrying their firearms at that point?

3 A They either had them holstered, if it was a sidearm.
4 There may have been a few agents who had them unholstered in
5 the down position. There were -- the majority of the
6 officers had sidearms, a few of them had rifles, and they
7 were in the down -- down -- or what we call low ready
8 position.

9 Q At any point, did you see agents pointing guns at any
10 person in the residence?

11 A No.

12 Q What was your -- what did you do as soon as the team
13 started to secure the residence?

14 A I stayed with Mr. Pence in the main foyer area of the
15 home. I began communicating and just talking with him in the
16 foyer, trying to give some explanation of what the court --
17 or what we were ordered by the court to do. And so I just
18 stayed in the main front area.

19 Q Is it fair to say you stayed with Mr. -- well, with the
20 defendant for more or less the entire time between when the
21 team entered the residence to when Mr. Pence left to
22 accompany you to a vehicle?

23 A More or less, yes.

24 Q At any point did you see if law enforcement brandished
25 weapons at the defendant?

1 A No.

2 Q At any point, did you see law enforcement yell at the
3 defendant?

4 A No.

5 Q Let me ask you about other members of the household.
6 Did you personally observe any adults or children
7 within the residence crying?

8 A I did not personally observe any of that.

9 Q Was anyone in the residence handcuffed?

10 A No.

11 Q At some point did the defendant attempt to go up the
12 stairs while the house was being secured?

13 A Yes.

14 Q Can you describe how that unfolded?

15 A I believe he was trying to retrieve some of his
16 children from upstairs and we asked that he just call them
17 down versus entering into an area that was unsecure for
18 officers. We asked that he just call the children down
19 versus putting himself in that position to where officers
20 were trying to clear; not add more chaos to the areas that
21 were still not cleared yet.

22 Q All right. Was there a particular concern that
23 animated that choice on your part to ask him to call down the
24 children as opposed to allowing him to go up the stairs to
25 get them himself?

1 A Repeat your question.

2 Q What was your rationale for making that decision?

3 A During our training, we try to minimize any sort of
4 additional people or potential risks into areas where
5 officers are trying to clear. So it was a situation where
6 for his safety and for the officers' safety it made sense to
7 just call people down versus bringing additional persons into
8 an uncleared area.

9 Q Is it also to prevent the hypothetical destruction of
10 evidence?

11 A Absolutely.

12 Q While you were with him, at any point did the defendant
13 ask to or attempt to speak with members of his family?

14 A No.

15 Q At some point, did Special Agent DeCarr ask the
16 defendant if he would be willing to speak with the two of you
17 in a vehicle?

18 A Yes.

19 Q Can you describe for the Court, from your perspective,
20 how did Special Agent DeCarr ask him or make that request?

21 A He just notified him that we wanted to speak to him.
22 And when I say "we," Special Agent DeCarr and I wanted to
23 speak to him and that we could do that anywhere but that
24 there was a vehicle that was available for us to be able to
25 speak to him. He was agreeable. Never had any sort of

1 concern with doing that.

2 MR. SCHILLINGER: Objection to the characterization
3 of whether he had a concern or not.

4 THE COURT: Sustained. That may be stricken. Next
5 question.

6 Q Did Special Agent DeCarr tell the defendant that he had
7 to come out to the car and speak with you?

8 A No.

9 Q What was the defendant's demeanor as you personally
10 observed it while Agent DeCarr was speaking to him?

11 A Respectful and calm.

12 Q So what happened next after the defendant agreed to
13 speak with you and Agent DeCarr in the vehicle?

14 A Because it was still morning hours and it was still
15 cold, he asked to put on some shoes and so we -- I allowed
16 him to go upstairs to get some shoes. And so he went up and
17 got some shoes on before we went out to the car and spoke to
18 him out in the car.

19 Q Did you perceive anybody -- any member of the team
20 following the defendant up the stairs?

21 A Yes. I followed him partway up the stairs. And at a
22 certain point up the stairs, another agent assisted and
23 facilitated him going into his room to get his shoes.

24 Q Is it fair to say that the master bedroom was
25 immediately at the top of the stairs on the second floor of

1 the residence?

2 A I know it was on the second floor, but I don't know the
3 layout of the master bedroom on that second story.

4 Q Were you able to hear the agent who was upstairs with
5 the defendant say anything to the defendant at that time?

6 A No. On the way up the stairs, somebody asked him to
7 slow down. But that's the extent of what I heard.

8 Q Do you recall -- was it you who asked him to slow down?

9 A No. I don't believe it was me. But I remember
10 somebody telling him to slow down rather than move so
11 quickly.

12 Q Is there a concern for individuals moving quickly
13 through a house that's -- for which, you know, where a search
14 warrant is being executed?

15 A Yes. It's the same as far as being a hazard or a risk
16 and the potential for evidence destruction.

17 Q At any point, did you hear someone threaten to shoot
18 the defendant?

19 A No. Never heard that.

20 Q What happened after the defendant retrieved his shoes
21 from the bedroom?

22 A He came back downstairs and we walked out together.
23 Agent DeCarr and myself and Mr. Pence walked out to the
24 vehicle.

25 Q Can you describe how the defendant got into the

1 Chevy Tahoe, which was the vehicle?

2 A So the Chevy Tahoe was positioned such that the
3 passenger's side was closest to the house, and that's the
4 side that Special Agent DeCarr and I got into. He walked
5 around to the other side of the vehicle and got into the rear
6 driver's side door.

7 Q Did either you or Agent DeCarr tell him that that was
8 the door he had to get into?

9 A I don't recall.

10 Q Did anyone open the door for the defendant --

11 A No.

12 Q -- so as to allow him into the vehicle?

13 A No.

14 Q Did either you or Agent DeCarr close the door behind
15 the defendant?

16 A No.

17 Q At any point, did you handcuff the defendant?

18 A No.

19 Q Did the doors lock on the defendant after he entered?

20 A No.

21 Q At any point during the interview, which, fair to say,
22 lasted almost five hours, correct?

23 A Yes.

24 Q And you were present through the vast majority of that
25 time inside the vehicle, correct?

1 A That's correct.

2 Q At any point did you observe -- did you observe any
3 agents stationed outside the vehicle?

4 A No. I mean, for what purpose?

5 Q I'll rephrase it. Were there any agents outside the
6 vehicle brandishing weapons and guarding the vehicle?

7 A No. That was not part of the operational plan, either.

8 Q If you did observe members of the investigation team
9 outside the vehicle, what were they engaged in?

10 A Either going to their vehicles to obtain their
11 equipment or to bring evidence to -- we had a van there that
12 was previewing digital devices. So they were bringing
13 evidence and devices down to the van. But there was nobody
14 positioned there for any amount of time or for any specific
15 purpose as far as guarding or providing security of some
16 sort.

17 MR. O'HANLON: I have no further questions, your
18 Honor.

19 THE COURT: Okay. You may cross-examine.

20 MR. SCHILLINGER: Thank you, Judge.

21 CROSS-EXAMINATION BY MR. SCHILLINGER:

22 Q Good morning, Agent Andersen.

23 A Good morning.

24 Q I'm Eric Schillinger. I'm Mr. Pence's attorney.
25 Thanks for coming up to New York to meet with us today.

1 A Sure.

2 Q I'm just going to ask you some questions about that
3 October day when you were involved in the search warrant
4 execution of Mr. Pence's house; okay?

5 A Sure.

6 Q First of all, you were the agent who was responsible
7 for developing the sort of tactical plan for the day. Is
8 that fair to say?

9 A That's correct.

10 Q And you testified during your direct testimony that
11 safety is a paramount concern when you are engaging in this
12 type of activity, of course?

13 A Of course, yes.

14 Q And how many years have you worked for the FBI?

15 A Just over 15.

16 Q And I'm sorry. Just let me know if you can't hear me
17 if I step away from this microphone or if I don't speak loud
18 enough.

19 During that time you had some training on how to
20 develop a tactical plan based on what would be safe, given
21 any investigative information that you have?

22 A Yes.

23 Q Okay. Are there instances where you may execute a
24 search warrant with just maybe one or two agents involved?

25 A I'm trying to think if we have ever done that.

1 Potentially, if it was a consensual search. So, again,
2 in that circumstance, possibly, yes.

3 Q Depending on the circumstance, you draw an analysis and
4 you determine what level of force is necessary to engage and
5 to execute a search warrant. Is that correct?

6 A Level of force, what do you mean by that?

7 Q About how many agents would be, you know, dedicated to
8 that particular execution of a warrant?

9 A Yes. Based off of the information that we would obtain
10 through the investigation, we would make a decision about
11 needed resources, manpower, so to speak.

12 Q So in addition to manpower -- and that would probably
13 be the first question, right? How many agents do we need to
14 go with us, right?

15 A Sure. That's one of the early questions that we ask.

16 Q And then on top of that, there is also analysis as to
17 what equipment to use. That's true?

18 A Sure.

19 Q And are there instances where you might execute a
20 warrant and maybe just, let's go and do it with maybe just
21 your sidearm. Is that something you could do?

22 A Potentially, yes.

23 Q And sometimes you might just -- you wear a bulletproof
24 vest, of course, for safety but maybe there is only a handful
25 of officers. Maybe four or five guys?

1 A It would be rare where we would do four or five
2 individuals. Again, it would have to be something that
3 dictates a very low level of concern.

4 Q Okay. And if you have a higher level of concern, you
5 are going to engage in more safety planning. So more
6 officers, right?

7 A You asked two questions there. Which one do you want
8 me to answer first?

9 Q So if you had a higher level of concern, you would
10 engage in more safety-related planning. Is that right?

11 A Yes.

12 Q And part of that would be increasing the number of
13 officers that you bring to execute the warrant, right?

14 A Not always. But frequently, yes, that would be a
15 consideration to bring more officers.

16 Q And it would also be an analysis as to what equipment
17 you would bring with you. Is that true?

18 A Yes.

19 Q And, you know, there is a range of equipment that the
20 FBI has available, too. Is that fair to say?

21 A Yes.

22 Q And now in your training and in your experience there
23 are some technical terms that we might use. So riot gear
24 would mean one thing. Is that true?

25 A Yes.

1 Q And then maybe just protective equipment, that's maybe
2 something lower than riot gear. Is that true?

3 A Yes.

4 Q Okay. Now, are those terms that you are familiar with
5 through your training?

6 A Which terms? Riot gear?

7 Q Riot gear and protective gear generally.

8 A Yes.

9 Q And are those distinctions that civilians typically
10 make, do you know?

11 MR. O'HANLON: Objection. Calls for speculation.

12 THE COURT: Overruled. You may answer.

13 A I am not sure what typical civilians would consider
14 riot gear versus tactical gear.

15 Q Let me direct your attention to the day in question.

16 When you arrived at the residence, there was a total
17 of -- is it 21 different law enforcement agents who were
18 involved?

19 A For the entirety of the operation, both the securing
20 and search, yes, I believe it was approximately 21.

21 Q And it's 14; is that right? So two-thirds of those
22 people who were involved in the initial entry?

23 A Approximately, 14. Now, you mean 14 individuals who
24 secured the residence? What portion are you asking about?

25 Q From the time that you arrived at the residence until

1 you lined up the door and gained entry, how many FBI agents
2 were involved in the initial step of gaining entry?

3 A So the reason for my hesitation is because we had other
4 agents -- agencies there, not just the FBI. So I think there
5 was probably five or six FBI agents that were present.

6 Q Okay. Thank you for clarifying that, actually. So out
7 of the people who were involved in gaining entry, a certain
8 percentage of them were FBI agents and a certain percentage
9 were either other agencies, Homeland Security or local
10 sheriff's deputies or similar that were assisting?

11 A Yes. There was three or four different agencies that
12 assisted us that day.

13 Q Okay. And the total number of people is 14 that went
14 through the door. Is that right?

15 A Approximately.

16 Q Okay. Now you testified during your direct testimony
17 that you traveled to the property in a caravan. Is that
18 true?

19 A Yes.

20 MR. SCHILLINGER: Judge, if I can, I'm going to ask
21 the witness to observe a video that is the Government's
22 Exhibit G-1. And I'm going to direct -- so for the record to
23 reflect, it's Channel 5, and it's going to be the video that
24 ends with the identification number ID13002.

25 Your Honor, so the Court is aware, I apologize for

1 the delay in the machine loading it. It's the mechanism of
2 how, I think, the secure -- I can't copy it onto my machine
3 directly. It won't play if I do that. It has to come off of
4 the drive that was provided. I tried to do it with --
5 directly on the machine and it wouldn't play. I'm just going
6 to pause it for one second.

7 Q Agent Andersen, can you see the video screen?

8 A I can, yes.

9 Q Have you ever seen this video before?

10 A Yes.

11 Q Okay. Great. And there's a date stamp and a time
12 stamp. It's October 27, 2021, at just about 6:45 in the
13 morning, right?

14 A Yes.

15 Q I'm just going to ask you to watch it and I'll pause it
16 when I have a question for you.

17 MR. O'HANLON: I apologize. For some reason, it's
18 not playing at the government's table, so I'll just watch it
19 from here.

20 MR. SCHILLINGER: I'm sorry. Your Honor, is it
21 playing on your screen and is it playing on the other
22 screens?

23 THE CLERK: Yeah. We're good.

24 MR. SCHILLINGER: It's playing on my screen.

25 I'll just pause it there for one second, Judge. So

1 the record reflects, I paused it at the time stamp 6:46:13.

2 Q Agent Andersen, does this video depict the caravan of
3 vehicles traveling to Mr. Pence's home?

4 A It appears to.

5 Q Okay. And just at this stage where I paused it, the
6 vehicles are still driving on the main road of the
7 property -- or, excuse me, the main road to the property. Is
8 that true?

9 A Yes.

10 MR. SCHILLINGER: I'm going to play it again.

11 Okay. I'm going to pause the video now at the time
12 stamp 6:48:05.

13 Q And, Agent Andersen, first of all, that video depicts
14 the caravan of agents and local law enforcement traveling to
15 Mr. Pence's house. That's right?

16 A Yes, it does.

17 Q And what we have just watched is roughly a dozen
18 vehicles travel up the main road and then drive up
19 Mr. Pence's driveway and pull into the driveway. That's
20 true?

21 A I don't know how many vehicles. I wasn't counting.
22 But probably close to 12.

23 Q If I told you it was 13, you would probably agree with
24 me, right?

25 A I just don't know. It was probably -- approximately

1 12.

2 MR. SCHILLINGER: Judge, may I approach the
3 witness?

4 THE COURT: You may.

5 Q Agent, I'm just going to show you what's in evidence as
6 Government's Exhibit G-2. Can you take a look at that? Have
7 you seen those images before?

8 A I have.

9 Q Those are the aerial images you were discussing, right?

10 A Yes.

11 Q On those images, there is a driveway that is depicted,
12 right?

13 A Yes.

14 Q That's Mr. Pence's driveway, right?

15 A Correct.

16 Q And there's a turnaround on that driveway, right?

17 A Yes.

18 Q The point that's depicted in the video, it's depicting
19 basically the fork in the driveway where the turnaround
20 starts. That's correct?

21 A So where it kind of Ys out?

22 Q Yeah. Where it Ys out.

23 A Yeah. That's observable, I think, maybe in the far
24 right part of the screen.

25 Q Sure. So just -- I'm really just trying to get sort of

1 a spatial. I haven't been there myself.

2 A Sure.

3 Q What we are seeing in the screen is this area where the
4 driveway comes in from the main road and then forks?

5 A Yes.

6 Q The images the government has provided in G-2 shows the
7 house and a portion of the driveway. The driveway extends a
8 little bit down the road and attaches and connects to the
9 main road. That's right?

10 A Say that again.

11 Q The image here --

12 MR. SCHILLINGER: Actually, it shows it. I'll just
13 withdraw the question.

14 Q Okay. Just in G-2, the area where Mr. Pence's vehicles
15 are parked, that's up the driveway from the main road where
16 the fork is. That's right?

17 A Yes.

18 Q And --

19 A On these images, yes.

20 Q Do you recall at the time that you were at their house
21 the vehicles were parked in a similar or substantially the
22 same location. That's true, right?

23 A I believe that there was some vehicles there. How many
24 or what type of vehicles, I'm not sure at the time.

25 Q And now do you recall there weren't any vehicles that

1 were owned by Mr. Pence or any other civilian vehicles.
2 There weren't any vehicles parked down the length of the
3 driveway between where the FBI vehicles stopped and the main
4 road?

5 A Not that I remember, no.

6 Q Agent, I stopped the video at 6:48:05. And it was at
7 approximately 6:48 that you began to line up and attempt to
8 gain entry into the house. Is that true?

9 A That sounds right.

10 MR. SCHILLINGER: Judge, I'm going to direct the
11 witness's attention to a video which is part of Government's
12 G-1. It's Channel 3. The identification number is 99 --
13 0 -- ID009937 for the record. And this is the last video I'm
14 going to play. So with respect to the loading, I apologize
15 for the delay. But we'll play this one with this witness and
16 then we'll leave it at that for now.

17 I'm going to pause this at 6:48:12.

18 Q And, Agent, have you seen this video before?

19 A Yes.

20 Q Okay. And this depicts sort of the front walkway,
21 entryway to the Pences' residence. Is that right?

22 A Correct.

23 Q And the vehicles, they are parked up here by the
24 residence. You can see them in the video, right?

25 A Correct.

1 Q And, if you know, can you tell us in relation to where
2 the video is depicting, where are the FBI vehicles that were
3 stopped?

4 A To the upper right of the screen off -- they are off of
5 the screen from this viewpoint.

6 Q And they would be between the house and the main part
7 of the road. Is that true?

8 A Yes. That's correct.

9 Q So if you were going to get in one of these vehicles
10 and drive away, you would have to navigate through where the
11 FBI vehicles were stopped. Is that fair to say?

12 A Yes. You have to be mindful of the cars that were on
13 or near the driveway.

14 MR. SCHILLINGER: Okay. Judge, I'm going to play,
15 so the record reflects it, this ID9937 in Government's
16 Exhibit 1, and this is playing from 6:48:15.

17 Q And, Agent, I'll just ask you to watch this and then
18 we'll go over what we see here in a minute.

19 Agent, I paused it and this is at 6 -- believe it's
20 6:48:34. And just right there at the top of the image, can
21 you see -- it's a shadow and it looks like it's someone
22 carrying something. Is that a shield?

23 A I can't be certain based on this image, but I -- we
24 frequently do bring a shield on our search warrants. So it
25 wouldn't surprise me at all if that is a shield.

1 Q Okay. What I'm going to do is, I'm going to skip it
2 back 10 seconds. I'll ask you to just watch that portion of
3 the video and you tell me if it is.

4 THE COURT: What are you doing standing there?

5 MR. O'HANLON: Judge, the monitor on counsel's
6 table doesn't work, so I have to look through here.

7 THE COURT: Okay.

8 Q Now, Agent, with me having given you a clue to look for
9 it, did you see the shield?

10 A Yes.

11 Q Okay. And that's a device that would be positioned at
12 the front of the line of agents before you would open the
13 door. Is that right?

14 A It has various purposes, but protection at a door is
15 one of them.

16 Q And that's what you would have it for in this instance.
17 That's right?

18 A We bring a shield to use for many different purposes.
19 A shield is to protect from firearm fire.

20 Q Okay. And where would you anticipate the firearm fire
21 coming from?

22 A I don't know the answer to your question or how to
23 answer your question because firearm can come from anywhere.

24 Q In this instance, would your concern be primarily
25 coming from the front door?

1 A We train as if every single house -- if every single
2 door and every single room could potentially be a threat. So
3 having a shield would be something that we would want to have
4 available to us as a tool to protect ourselves in any room in
5 any space inside of any sort of building.

6 MR. SCHILLINGER: Okay. I'm going to play the
7 video again from 6:48:36.

8 Q Agent, while it's playing, let me ask you, the flashing
9 lights that we see, those are law enforcement alert lights,
10 right?

11 A Yes.

12 Q And we can see in the video at least a few of the
13 agents. It appears that they are carrying assault weapons or
14 rifles, long guns?

15 A There appears to be several agents that do have rifles
16 in this depiction.

17 Q Agent, let me ask you, the last man in line here, he
18 has a sledge hammer in his hands, doesn't he?

19 A I'm not sure if that's a sledge hammer or if it's what
20 we call a halogen tool, but it looks like some sort of a
21 breaching tool.

22 MR. SCHILLINGER: I'm going to pause it at 6:50:01.

23 Q Can you explain what that halogen tool is?

24 A It's like a crowbar.

25 Q Okay. And breaching tools, they are used to gain entry

1 to the property, obviously, if someone doesn't open the door?

2 A That's correct.

3 Q Okay. Now, Agent, we've seen them all, the 14 men line
4 up at the door. And now it looks like the video shows the
5 door is opened and you have been able to gain entry. Is that
6 accurate?

7 A Yes. That does appear that we've gained entry at this
8 stage.

9 Q And at this stage, maybe 10 or 12 of the 14 gentlemen
10 have gone in. Is that accurate?

11 A Yes, approximately.

12 Q A couple kind of remain outside for safety purposes,
13 right?

14 A Right.

15 Q Okay. I'm going to stop playing the Government's
16 Exhibit 1 at the 6:51:25 mark. And I'm going to ask you some
17 questions, Agent, about that.

18 So once you gained entry to the property, you were able
19 to make contact with Mr. Pence basically right away. He
20 opened the door, right?

21 A Correct.

22 Q And from when he saw you and he saw the shield and the
23 breaching tools, he let you right in. He didn't resist.
24 That's right?

25 MR. O'HANLON: Objection. Calls for speculation.

1 THE COURT: Yeah. Sustained.

2 Q The shield and the breaching tools, they were up by the
3 front door. That's right?

4 A I'm not sure where they were located. Usually, the
5 breaching tools would be further away from the beginning of
6 the line.

7 Q Okay. And the shield would be up at the front of the
8 line?

9 A Usually towards the front.

10 Q And so everybody lined up here on these steps and then
11 as the video progressed, everyone moved up right to the front
12 door. That's right?

13 A No. I believe that there was individuals that stayed
14 back purposefully to allow reasonable conversation with
15 Mr. Pence.

16 Q Does the video here depict those people standing back
17 on the steps or are they all up at the front door?

18 A Right now?

19 Q Yeah.

20 A Right now it appears that they are all towards the
21 front of the house. Or at least out of view of this angle.

22 Q Okay. Now, on direct, you testified that when you went
23 into the house, you and Agent DeCarr made initial contact
24 with Mr. Pence. That's true?

25 A That's true.

1 Q And you began to secure the residence. That's right?

2 A Correct.

3 Q And in doing so you collected his family members and
4 asked them to wait in the living room area of the house?

5 A Yes. We asked them to congregate in a specific common
6 area in the home.

7 Q And your testimony was that Mr. Pence was separately
8 with you in the foyer of the house. He wasn't in the living
9 room. That's right?

10 A Yes. Mr. Pence was in the foyer during that time
11 frame, yes.

12 Q Just if you witnessed it, did you see Mr. Pence have an
13 opportunity to speak with his wife?

14 A I did not see Mr. Pence speak with his wife.

15 Q Now some of the agents who -- who were with you for
16 safety purposes or they were wearing helmets and other safety
17 gear, bulletproof vests, similar things like that?

18 A I don't recall helmets. It's possible. We have a
19 couple officers that may have helmets that they brought. But
20 for sure, body armor.

21 Q Do you recall giving an affidavit in this case?

22 A Yes.

23 Q If I showed you the affidavit, would it remind you as
24 to what your testimony was with respect to the use of
25 helmets?

1 A Sure.

2 MR. SCHILLINGER: Judge, I'm going to show the
3 witness -- if I can approach, please.

4 THE COURT: You may.

5 MR. SCHILLINGER: Judge, I'm going to show the
6 witness what is Exhibit 2 to the government's responsive
7 papers here. It's Mr. Andersen's affidavit. I'll direct his
8 attention to paragraph 3 there.

9 Q Why don't you take a look at that and then once you
10 have read it, look up to me. And if it refreshes your
11 recollection, you can tell me.

12 A Okay.

13 Q Okay. Thank you. So now I will just ask you the
14 question again. Do you recall were there agents who were
15 wearing helmets when you made that entry into the property?

16 A Yes. Possibly between one and three.

17 Q Now, there may be some technical distinctions between a
18 riot helmet and a helmet that might be worn for safety
19 without a shield. But helmet -- same thing. A helmet is a
20 helmet, right?

21 A A helmet is not a helmet. There's helmets that are
22 used for ballistic protection and there is also helmets that
23 are used for ballistic protection and also blunt objects and
24 protection from the orifices on your face from sprays, gases
25 and those kinds of things which you typically find in a riot

1 gear set.

2 Q Okay. And that is -- I'll agree with you. That type
3 of helmet would be a more elevated type of helmet than the
4 one that was worn in this situation. Is that fair to say?

5 A Sure. Yes.

6 Q Is that a distinction that you believe a civilian would
7 commonly make?

8 MR. O'HANLON: Objection. Calls for speculation.

9 THE COURT: Overruled. He may answer.

10 A I'm not sure. My opinion is, is that most people
11 recognize riot gear as something with an actual face shield
12 that provides protection to the face.

13 Q Okay. Thank you.

14 MR. SCHILLINGER: Judge, can I approach the witness
15 again?

16 Q Agent, I'm going to show you what's in evidence as
17 Defendant's Exhibit L. It's a screenshot from Government's
18 Exhibit 1. Can you take a look at that? That is that same
19 camera angle that we were watching the vehicles pulling up.
20 It's about a half an hour later. Is that right?

21 A Yes, sir.

22 Q And does that accurately depict where the vehicles were
23 parked after you had made your initial arrival at Mr. Pence's
24 residence?

25 A Yes.

1 Q Okay. I'll just take that away from you. Thank you.

2 Agent, you testified on direct that you had the
3 opportunity to accompany Mr. Pence partway up the stairs in
4 his house when he was getting shoes for where he would go out
5 to the vehicle to be questioned. Is that right?

6 A Yes.

7 Q And you said you only went about halfway up and then
8 another agent accompanied him up the rest of the way, right?

9 A Right.

10 Q Do you know who that agent was?

11 A I do not.

12 Q And you didn't hear personally any conversation between
13 Mr. Pence and whoever that agent was. That's true?

14 A I did hear somebody tell him to slow down.

15 Q And that was when they were going up the stairs?

16 A Yes.

17 Q And then your testimony on direct was you couldn't see
18 them once they went into Mr. Pence's bedroom. That's true?

19 A I could not see them when they went into Mr. Pence's
20 bedroom.

21 Q Your testimony was that you are not familiar with the
22 upstairs layout of the house. That's true?

23 A That's correct.

24 Q So once they went up the stairs, you don't know
25 precisely where they went to?

Andersen - Redirect

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1 A I do not, no.

2 Q You don't know if you would be able to even hear a
3 conversation if one happened. That's right?

4 A I'm not sure if I could or not.

5 THE COURT: Anything further with this witness?

6 MR. SCHILLINGER: Judge, just one second.

7 (Pause in proceedings.)

8 MR. SCHILLINGER: No. Thank you, Judge.

9 THE COURT: Redirect, if any?

10 MR. O'HANLON: Very brief, your Honor.

11 REDIRECT EXAMINATION BY MR. O'HANLON:

12 Q Directing your attention --

13 MR. O'HANLON: Permission to approach, your Honor?

14 THE COURT: You may.

15 Q Special Agent Andersen, directing your attention to
16 Defense Exhibit L, the depiction of the driveway, what is the
17 time stamp on Exhibit L?

18 A 7:32.

19 Q So at this point, you were interviewing the defendant
20 in the Chevy Tahoe, correct?

21 A That's correct.

22 Q Can you see the Chevy Tahoe in Exhibit L?

23 A Yes.

24 Q Is there anyone guarding the outside of the
25 Chevy Tahoe?

Lydon - Direct

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1 A No.

2 Q Is there anyone walking around brandishing a firearm?

3 A No.

4 MR. O'HANLON: Thank you. Nothing further.

5 THE COURT: Anything further with this witness?

6 MR. SCHILLINGER: No, Judge. Thank you.

7 THE COURT: Okay. You may step down. Do you have
8 anything else?

9 MR. O'HANLON: The government has one more witness,
10 your Honor.

11 THE COURT: Call him.

12 MR. O'HANLON: The government will call Special
13 Agent Patrick Lydon.

14 THE CLERK: Good afternoon, sir. Sir, would you
15 please state your full name, spell your last name for this
16 record.

17 THE WITNESS: My first name is Patrick. My last
18 name is Lydon, spelled L-Y-D-O-N.

19 THE CLERK: Thank you, sir.

20 P A T R I C K L Y D O N, called as a
21 witness and being duly sworn, testifies as follows:

22 THE COURT: Mr. O'Hanlon, you may proceed.

23 DIRECT EXAMINATION BY MR. O'HANLON:

24 Q Good afternoon, Special Agent Lydon. What is your
25 current occupation and assignment?

1 A I'm a special agent for the Federal Bureau of
2 Investigation assigned to the Albany division.

3 Q And how long have you been with the bureau?

4 A I was hired in January of 2020.

5 Q How were you assigned back in October of 2021?

6 A I was a member of the FBI Capital District Safe Streets
7 Gang Task Force.

8 Q And in that capacity, did you become involved in the
9 investigation of a murder for hire in October of 2021?

10 A Yes.

11 Q What was your role in the investigation?

12 A I aided Special Agent DeCarr with initial interviews
13 with the victims and I participated in the search warrant on
14 October 27, 2021.

15 Q Were you part of the original team that performed the
16 entry on the residence?

17 A Yes.

18 Q Can you describe from your perspective how the entrance
19 to the residence was accomplished?

20 A We went up to the front door of the residence and the
21 lead agents knocked on the door, had a conversation with
22 Mr. Pence, and then we entered the foyer area.

23 Q How far back were you in that stack of agents?

24 A A couple people, I think.

25 Q Did you have a firearm on you at that time?

Lydon - Direct

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1 A Yes.

2 Q Okay. And how were you handling it as you entered the
3 residence?

4 A As we entered the -- at the time, I would have either
5 had it at the low ready or in my holster.

6 Q Do you recall either way?

7 A I don't recall either way.

8 Q Okay. In any event, how did you observe the other
9 agents in that initial group? How were they handling their
10 weapons?

11 A In the same manner. Either at low ready or in their
12 holster. Or if they had a rifle it was controlled in their
13 hands.

14 Q How long did it take before the agents either holster
15 their sidearms or slung their long guns?

16 A Not long. Estimate once we had that initial
17 conversation in the foyer, there is a small team of agents
18 and law enforcement that conducted the initial clearing of
19 the residence and everyone else either -- everyone else
20 holstered or slung -- shouldered their weapons.

21 Q And what did you do at that point after entrance was
22 made?

23 A I went to the living room recreation area.

24 Q And what did you do there?

25 A I was just sitting there -- or standing there with

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1 the -- with the members of the family. The occupants of the
2 house.

3 Q Fair to say that all the residents of the house except
4 for the defendant were eventually led down into the living
5 room area?

6 A Yes.

7 Q How would you describe that process of them being led
8 to that area?

9 A Everyone was calm. You could tell that they were
10 confused as to why we were there. But everyone just listened
11 to us and moved into the living room area.

12 Q Did you observe any adults or children who were upset
13 at that point?

14 A No.

15 Q During the process of securing of the residence, did
16 you see law enforcement agents point guns at any of the
17 inhabitants?

18 A No.

19 Q Did you see them -- any agents yelling at the
20 inhabitants?

21 A No.

22 Q Were there any threats that were conveyed to the
23 inhabitants during the portion of time that you were present
24 for the securing of the residence?

25 A No.

1 Q I am showing you what's been previously admitted as
2 Government Exhibit 3. Do you recognize Government 3?

3 A Yes.

4 Q Okay. So when you said you were present in the living
5 room, are you referring to Room F?

6 A Yes.

7 Q And how long do you think you were in Room F, roughly
8 speaking, from the time of the entrance into the residence
9 until you left that area?

10 A Estimate 15 minutes before we -- before we went to the
11 master bedroom to interview Michelle Pence.

12 Q And Michelle Pence is the defendant's spouse?

13 A Yes.

14 Q Can you describe how you went about asking Ms. Pence if
15 she was willing to speak with you?

16 A Yes. I went up to Mrs. Pence and I was, like, do
17 you -- would you like to talk to me? Is there a good place
18 that we could talk? And I think in talking to her we decided
19 the master bedroom would be a good, quiet place to talk.

20 Q And do you recall where your gun was at that point when
21 you asked to speak with her?

22 A It was in its holster.

23 Q And you said you went up to the master bedroom,
24 correct?

25 A Yes.

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1 Q Making reference to Government 3, how did you and
2 Ms. Pence get to the master bedroom?

3 A That staircase near the front door, it leads up to the
4 master bedroom. You get up to the top of the stairs and then
5 you can kind of see the master bedroom right there at the
6 top.

7 Q Okay. And you are referring to the indication the
8 upstairs stairway that's sort of like a curve, on
9 Government 3?

10 A Yes.

11 Q Is it fair to say that the master bedroom is at the top
12 of the stairs?

13 A Yes.

14 Q Had the master bedroom been secured at that point?

15 A I can't recall. I believe so.

16 Q During the roughly 15 minutes that you said you were in
17 the living room with the family members before interviewing
18 Ms. Pence, did you recall any of the family members trying to
19 speak with the defendant?

20 A No.

21 Q Where was the defendant at that time, if you know?

22 A I couldn't see him. I believe he was at the front door
23 speaking with the interview team.

24 Q So when you were in the living room, you actually
25 weren't able to see the defendant in the foyer?

1 A No. There's a wall. If I wanted to see what was going
2 on in the foyer, I would have to, like, momentarily walk into
3 Room G on the exhibit just to see if we were ready to go up
4 there.

5 Q Did you see any armed agents stationed by the windows
6 within the residence?

7 A No.

8 Q Did any of the agents that you observed prevent any
9 inhabitants or the residents of the house from looking out
10 the windows?

11 A No.

12 Q As the search -- or, sorry, as the warrant was
13 executed, was the family restricted to the living room or
14 were they able to enter other rooms in the house?

15 A During the search warrant? Well, most of the search
16 warrant was spent in the master bedroom.

17 Q That's fair. I want to show you what's been previously
18 marked as Government 4 and stipulated that it's in evidence.

19 Do you recognize the picture on top of Government 4?

20 A Yes.

21 Q What is depicted there?

22 A It depicts the living room and the kitchen area in the
23 Pence residence.

24 Q Okay. Fair to say there are family members walking
25 around the kitchen?

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1 A Yes.

2 Q And there is a boy with a -- what appears to be a water
3 bottle?

4 A Yes.

5 Q And is the children's grandmother depicted in the nook,
6 the breakfast nook?

7 A Yes.

8 Q And is that you in the far back right?

9 A Yes.

10 Q What are you doing there?

11 A I think I am just making small talk with members of the
12 Pence family.

13 Q Was this after the interview of Ms. Pence had taken
14 place or before?

15 A I think it's after.

16 Q What are the other members of law enforcement doing as
17 depicted in Government 4?

18 A At this point they would have been wrapping up with the
19 search warrant.

20 Q And directing your attention to the photograph on the
21 bottom of Government 4, what is depicted there?

22 A That's that recreation room that leads into the living
23 room in the photo on top.

24 Q All right. So that's a different room that is off of
25 the living room?

1 A Yes.

2 Q And just briefly directing your attention back to
3 Government 3, when you say the recreation room, you are
4 talking about what's indicated as Room G?

5 A Yes.

6 Q And the breakfast room -- or the kitchen area is Room D
7 and Room E, correct?

8 A Correct.

9 MR. O'HANLON: No further questions.

10 THE COURT: Mr. Schillinger, you may examine.

11 CROSS-EXAMINATION BY MR. SCHILLINGER:

12 Q Hello, Agent. I am Eric Schillinger. I represent
13 Mr. Pence. Couple of questions for you very quickly.

14 Actually, first of all, while the initial securing of
15 the residence and the search warrant was being executed, the
16 family members of Mr. Pence, they were kept in the living
17 room of the property. That's correct?

18 A We ushered them into the living room area, yes.

19 Q And they weren't allowed to move about the house while
20 the warrant was being executed while the search was taking
21 place, were they?

22 A I was in the master bedroom, so I wasn't able to
23 observe a lot of that.

24 Q Just generally speaking, when a search is being
25 conducted, an area is secured to avoid the destruction of

1 evidence. That's right?

2 A Yes.

3 Q And the purpose of corralling Mr. Pence's family in the
4 living room was to secure the area for the search. That's
5 right?

6 A Yes.

7 Q And you were actually in the master bedroom with
8 Ms. Pence during this period, so you didn't actually witness
9 what was happening. That's true?

10 A During the actual search?

11 Q Yes.

12 A Yes. I was in the master bedroom.

13 Q Now, approximately how long were you in the master
14 bedroom for?

15 A Approximately three hours.

16 Q And how long did the search take?

17 A I think it would be anywhere between four and five
18 hours.

19 Q So the search was ongoing for many hours during the
20 course of the morning. That's right?

21 A Yes.

22 Q Now, you've arrived at the property just before 7 a.m.
23 That's correct?

24 A Yes.

25 Q And if you know, Mr. Pence was removed to the police

1 vehicle for questioning just around 7 a.m. That's right?

2 A All I know is that when I left the room after to see if
3 they were still there, he was gone. I didn't know exactly
4 where he had gone.

5 Q Okay. Now, you were in the master bedroom with
6 Ms. Pence for about three hours?

7 A Yes. With another agent.

8 Q And your testimony is that in Government's Exhibit G-4,
9 which I will -- in Government's Exhibit G-4, you appear in
10 that image, in the corner of the image on the top of the
11 page. That's true?

12 A Yes.

13 Q And there is a clock actually on the wall -- there is
14 two clocks on the wall in this image. That's correct?

15 A At least, yes.

16 Q Can you tell what time that those clocks depict?

17 A Looks like 10:35 about.

18 Q So it's 10:35 and the sun is up. It's 10:35 a.m.,
19 probably, right?

20 A Yes.

21 Q So this picture was taken something like three and a
22 half hours after Mr. Pence was removed to the vehicle. Is
23 that right?

24 A Or since execution of the warrant, yes.

25 Q I'm sorry. What do you mean by since execution of the

1 warrant?

2 A When we started.

3 Q You got there about 7 o'clock?

4 A Yes.

5 Q This is three and a half hours later, right?

6 A Yes.

7 Q Okay. And during the period that the warrant was being
8 executed, the family was kept in the living room to prevent
9 the destruction of evidence and keep the property secure.
10 That's right?

11 A And the kitchen area and the recreation room.

12 Q Did Ms. Pence ask you if she could speak with her
13 husband?

14 A At any point?

15 Q At any point.

16 A Yes.

17 Q And she was not allowed to. That's correct?

18 A She -- we didn't prevent her. The defendant asked us
19 to -- or told us that he did not wish to talk to her.

20 Q During your direct testimony, you described it as a
21 small team that conducted the clearing of the residence. I
22 think that was your term. Is that right?

23 A Yes.

24 Q And the small team, it was 14 individuals, correct?

25 A So what I meant by that is, like, there was a lot of us

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1 in the foyer area and then the actual team that went
2 throughout the house to do the law enforcement clearing was a
3 smaller group out of that approximately 14 individuals.

4 Q So a total 14 people?

5 A Approximately.

6 Q And then during the course of the investigative period,
7 at least 7 more people were involved. There's a total of 21
8 people at the house that day. That's right?

9 A That sounds right.

10 MR. SCHILLINGER: Nothing else, Judge. Thank you.

11 THE COURT: Anything further with this witness?

12 MR. O'HANLON: No further questions.

13 THE COURT: All right. You may step down. Any
14 further additional evidence by the government?

15 MR. O'HANLON: Subject to the acceptance into
16 evidence of all the stipulated items of evidence, your Honor,
17 nothing further for the government.

18 THE COURT: Is the defense going to be presenting
19 any additional evidence for the record?

20 MR. SCHILLINGER: Judge, yes, we do have witnesses
21 to call.

22 THE COURT: We'll take a break till 1:30 and we'll
23 resume with the defense part of it, additional evidence.

24 THE CLERK: Court stands for a short recess.

25 1 o'clock, folks -- or 1:30, everybody back in court.

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1 (Recess, 12:41 p.m.)

2 (Open court, 1:44 p.m.)

3 MR. O'HANLON: Your Honor, I believe the Court
4 has -- the government is recognizing the defendant has
5 handcuffs on. I understand it's not a trial. There is no
6 jury here. This is sort of short -- you know, I wasn't able
7 to brief this or do a full research on it. However, my
8 concern is that, you know, because he is testifying on his
9 own behalf and also because this is, you know, a proceeding
10 that's akin to trial, obviously, without a jury, I was just
11 going to ask -- I believe the Court needs to make a finding
12 that the defendant should be -- should remain shackled, if he
13 is to remain shackled, during this type of proceeding, is my
14 understanding. I don't have a cite for the Court, though,
15 because I hadn't been able to research it.

16 THE COURT: Well, is there a request to unshackle
17 him?

18 MR. SCHILLINGER: Judge, earlier in the day I had
19 made a request with the marshals to allow him to wear street
20 clothes and be unshackled, and it was off the record, of
21 course. It was indicated that was not an option at the time.
22 I do think that when he testifies, it's appropriate for him
23 to not be restrained. So we would make that request.

24 THE COURT: Well, as far as I'm -- do you
25 understand -- you are going to call him as a witness?

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1 MR. SCHILLINGER: Yes, Judge.

2 THE COURT: All right. Well, stand up, Mr. Pence.
3 If I order the marshals to unshackle your hands, are you
4 giving me your word that you will behave yourself --

5 THE DEFENDANT: Absolutely, sir.

6 THE COURT: -- and not do anything at all?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. And, of course, if you do,
9 it's not going to go well for you for the rest of the
10 proceedings.

11 THE DEFENDANT: Understood.

12 THE COURT: Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. I'm ordering that you
15 unshackle and call him as a witness, and you can --

16 MR. SCHILLINGER: Judge, I'm going to call
17 Ms. Pence first. I don't know if we want to take the cuffs
18 off now or -- it's up to the Court.

19 THE COURT: All right. Call your first witness.

20 MR. SCHILLINGER: Judge, the defense calls
21 Michelle Pence.

22 THE CLERK: Good afternoon, ma'am. Can you please
23 state your full name and spell your last name for the record.

24 THE WITNESS: Michelle Marie Pence. P, as in
25 Peter, E-N-C-E.

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1 THE CLERK: Thank you, ma'am. Please raise your
2 right hand.

3 M I C H E L L E M. P E N C E, called as
4 a witness and being duly sworn, testifies as
5 follows:

6 THE COURT: You may proceed.

7 MR. SCHILLINGER: Thank you, your Honor.

8 DIRECT EXAMINATION BY MR. SCHILLINGER:

9 Q Hi, Ms. Pence. Can you state your name and where you
10 live for the record?

11 A Michelle Pence, 2929 South 6500 West, Cedar City, Utah
12 84720.

13 Q Is the defendant, Mr. Pence, your husband?

14 A Yes, sir.

15 Q Can you tell us a little bit about your family?

16 A My husband and I live in Utah with our children, and
17 his parents also reside with us.

18 Q Okay. And I'm going to direct your attention to the
19 day that is in question here, October 29, 2021.

20 Can you tell me what, if anything, happened that day?

21 A Do you mean the 27th, sir?

22 THE COURT: 27th.

23 Q I'm sorry. October 27, 2021. Thank you.

24 A On that morning, it was early morning, I was nursing my
25 infant, when my husband urgently called me downstairs. I got

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1 up and went to the restroom. And when I came back into my
2 bedroom, I saw search lights, big search lights on my bedroom
3 ceiling. And I looked out the window and saw lights, like,
4 law enforcement vehicle lights.

5 Q Okay. Michelle --

6 A I quickly went downstairs.

7 Q Thank you. What did you do when you saw those lights?

8 A I went downstairs quickly.

9 Q And when you got downstairs --

10 A And my front room was filled with a bunch of law
11 enforcement agents and -- with big rifles and bulletproof
12 vests, and it looked to me at the time to be riot gear.

13 Q Do you have any experience with law enforcement or
14 working in the military or anything like that?

15 A No.

16 Q So you used the words "riot gear." That's maybe a
17 technical term, but to you that's what you perceived it to
18 be?

19 A That is what it felt like to me, but I -- I have no
20 experience.

21 Q Okay. And when you went downstairs, did you see your
22 husband?

23 A No. No. He was already gone. I asked where he was --

24 Q Ms. Pence, if you could just -- if you can respond to
25 my question and then I will ask you another question.

1 Thank you.

2 So do you know where he was, if you know?

3 A I asked and I was told unavailable. He was
4 unavailable.

5 Q Okay. And after you asked that, what was the next
6 thing that happened?

7 A I was still coming down the stairs. They asked if
8 anybody else was upstairs. I had just left my infant
9 upstairs, so I knew she was there. They escorted me upstairs
10 to go and get her.

11 Q When you say they, who do you mean?

12 A Agents. They -- various things were written -- various
13 letters were written on their jackets. Primarily, FBI, I
14 believe.

15 Q You understood that these were law enforcement agents?

16 A I did.

17 Q And they were people from the FBI, was your
18 understanding?

19 A Correct.

20 Q You went upstairs to get your infant?

21 A I was escorted upstairs to get my infant and I brought
22 her down. My father-in-law was in the entryway, I passed her
23 off to him, and --

24 Q When you were escorted, were the people who went
25 upstairs with you, were they armed?

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- 1 A Yes. They had big assault rifles.
- 2 Q And after you got your infant and you went back
- 3 downstairs, what was the next thing that happened?
- 4 A The agents asked me if everybody was present.
- 5 Q Was everybody present?
- 6 A No.
- 7 Q Who was still upstairs?
- 8 A My four-year-old was still upstairs asleep.
- 9 Q Okay. Did you go back upstairs to get him?
- 10 A I started to and was told, no, that I needed to sit
- 11 down and stay here. I asked if I could please accompany them
- 12 to go and get him.
- 13 Q And what happened?
- 14 A They would not allow me to go. They went up to get him
- 15 and brought him down.
- 16 Q And when they went to get him, did you see if they were
- 17 armed?
- 18 A They certainly were.
- 19 Q And they escorted your four-year-old into the living
- 20 room. That's right?
- 21 A Yes, sir.
- 22 Q And at that point, was everyone who lives in your house
- 23 all in the living room together?
- 24 A Other than my husband, yes. When they brought my
- 25 four-year-old in, he was terrified. He ran over to me and

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1 asked, "Are they here to kill me?"

2 Q And what did you say to him?

3 A I told him, "I don't think so."

4 Q What happened after that?

5 A We were told that we needed to stay here and I asked
6 what was going on. They would not answer. I asked to --
7 they said they had a search warrant. I asked to see it.
8 They refused. I asked to see my husband. They refused.

9 Over the course of the next few hours, I asked multiple
10 times to see both of -- both my husband and the search
11 warrant and was denied.

12 Q During that period of time, were you kept in the living
13 room area of your house?

14 A Yes.

15 Q And did you also have an interview with an agent in
16 your bedroom?

17 A Yes, I did. But no family member was allowed to leave
18 the living room area, including to go to the restroom in an
19 open floor concept without being escorted there.

20 Q So you were with -- you were with a law enforcement
21 person in the living room or in the bedroom when you were
22 interviewed and the rest of your family was as well. That's
23 right?

24 A Correct.

25 Q Were you allowed to move freely around the house or

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1 were you all kept in one room?

2 A No, we were not. Children asked to get reading books
3 and things that they wanted to be able to do. They were
4 denied access to anywhere else in the house.

5 MR. SCHILLINGER: Judge, can I approach the
6 witness?

7 THE COURT: You may.

8 Q Ms. Pence, I am going to show you what's in evidence as
9 Defendant's Exhibits J -- and, actually, I'll give you K also
10 right now.

11 Those are screenshots from a security camera that you
12 have in your house. That's right?

13 A Correct.

14 Q Have you seen those images before?

15 A Yes, I have.

16 Q Do they accurately depict the general situation that
17 was going on in your house that morning?

18 A As much as you can from that particular camera angle.
19 There -- in the front entry room of the house, there are a
20 whole lot more agents. There is also more agents back
21 between the end of the kitchen and the garage door.

22 Q So the image that you are holding there, there's a
23 living room and then it opens into the kitchen sort of at the
24 back of the image. Is that true? The top of the image, I
25 should say.

1 A You can just see the edge of the kitchen, yeah. You
2 can see the living room, dining room, and the edge of the
3 kitchen.

4 Q And then there's a door on the left side of the image
5 and there's an agent sort of standing just adjacent to that
6 doorway. That's right?

7 A Correct.

8 Q Was there anybody -- to your knowledge, was there
9 anybody in that door on the other side that's not visible in
10 the camera angle?

11 A Can you restate the question for me, please.

12 Q Sure, yeah. Let me rephrase that.

13 Were there agents on the other side of that doorway
14 that aren't appearing in the image?

15 A I am not sure which doorway you mean. I apologize,
16 sir.

17 Q The doorway on the left in the image that goes into the
18 other room of the house.

19 A We could see other agents through that doorway,
20 absolutely. One stood at the window for the majority of the
21 day. But they were there holding a rifle and would not allow
22 people to even look out the window.

23 Q How long did -- how much time elapsed where you were
24 corralled in that living room area and not free to move
25 around your house?

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1 A Several hours. I'd say more than three hours.

2 MR. SCHILLINGER: Judge, if I can approach again?

3 THE COURT: You may.

4 Q I am just going to show you what's been marked as
5 Government's G-4.

6 Ms. Pence, do you recognize those images? You have
7 seen those before, right?

8 A Yes, sir.

9 Q Okay. And those images depict the other side of
10 your -- the first floor of your house. That's right?

11 A Correct.

12 Q Compared to what's in the defendant's exhibits?

13 A Yes, sir.

14 Q What time were those pictures taken?

15 A The clock on the wall says 10:37.

16 Q And at that stage, you were moving around your house.
17 That's right?

18 A These were taken shortly after we were told they were
19 wrapping up and we may move about the first floor, but not to
20 leave that floor.

21 Q It was about a three-and-a-half or four-hour period
22 that you were kept in one room and then allowed to leave
23 after that?

24 A Correct.

25 Q Did you ask any of the agents if you could leave that

1 room while you were corralled in your living room?

2 A Yes.

3 Q What did you say?

4 A We asked multiple times for different things. I
5 actually asked if I could take everybody with me and go do
6 the very necessary grocery shopping that needed to be done
7 that day, and I was told we may not leave the premises at
8 all, that we must stay in this room.

9 Q And did you ask to do anything else to leave the
10 premises?

11 A I asked to see my husband. I asked to take people to
12 the park. I asked -- we asked if we could go retrieve
13 reading books and different items from the house, that the
14 children had something to do while we were just sitting here.

15 Q And did any of that happen?

16 A We were denied anything that we asked. I was not even
17 allowed to escort my toddler to the restroom with the agents
18 escorting him.

19 Q Did you have any contact at all with your husband on
20 that day?

21 A No. I asked multiple times to see him.

22 Q And he was out of the house before you were even
23 downstairs when the FBI arrived?

24 A Correct.

25 Q And you didn't speak with him again after that. That's

1 true?

2 A Nope.

3 MR. SCHILLINGER: Okay. Thank you, Judge. I don't
4 have any other questions.

5 THE COURT: Mr. O'Hanlon, you may examine.

6 CROSS-EXAMINATION BY MR. O'HANLON:

7 Q Good afternoon, Ms. Pence.

8 A Good afternoon.

9 Q Would you prefer Ms. Pence or Mrs. Pence?

10 A Mrs., please.

11 Q You got it. So back on October 27th of 2021, is it
12 fair to say that that was a pretty upsetting day?

13 A Very much, yes.

14 Q Okay. At the end of that day, your husband had been
15 arrested by the FBI, correct?

16 A Correct.

17 Q And your whole house had been searched by the FBI,
18 correct?

19 A I presume -- you know, I -- I was not a part of the
20 search. I was kept in a single room. So I really can't say
21 what was searched.

22 Q As far as you were aware, there had been a big search
23 at your house. Fair to say?

24 A Correct.

25 Q Okay. And in the wake of that, your husband was

1 charged with a murder-for-hire --

2 A Correct.

3 Q -- charge, correct?

4 A Yes, sir.

5 Q And he has been in custody since that time, correct?

6 A Yes, he has.

7 MR. SCHILLINGER: Object to that, Judge, just for
8 relevance.

9 THE COURT: Overruled. Move on.

10 Q Okay. Is it fair to say that you are not happy that
11 your husband was charged in this case?

12 A I really can't speak to this. This isn't really what
13 we are here for.

14 Q All right. I guess I'm going to ask the question again
15 because it is relevant to your testimony today.

16 THE COURT: Obviously she is unhappy. Move on with
17 something relevant, okay?

18 Q You previously testified that you didn't have any
19 communications with your husband that day, correct?

20 A Correct.

21 Q Okay. Is it fair to say that your husband -- you and
22 your husband had completely different experiences that
23 morning given that you didn't even see him? Is that fair to
24 say?

25 MR. SCHILLINGER: Objection, Judge.

1 THE COURT: Sustained.

2 Q So you had no communication with your husband, correct?

3 A Correct.

4 Q Okay. He didn't communicate with you, either before he
5 was arrested, correct?

6 A Correct.

7 Q And you were interviewed at one point by
8 Special Agent Lydon, correct?

9 A I can say I was interviewed. I'm sorry, I don't know
10 the name of the agent who interviewed me.

11 Q That's fine. An agent or I guess perhaps two agents
12 went upstairs with you to the master bedroom?

13 A Yes. Yes.

14 Q All right. And there was an interview that lasted
15 approximately three hours, correct?

16 A I have no idea.

17 Q Okay. Well, during the period of that interview, you
18 were not aware of what was going on outside of the house,
19 correct?

20 A I was aware of the doors opening and closing because of
21 the alarms going off and the motion sensors in my bedroom
22 alarming.

23 Q So when you were in your master bedroom, could you hear
24 what was going on downstairs on the first floor?

25 A I could -- could I hear what was going on? I'm sorry.

1 Are you saying could I hear what was being said?

2 Q Correct. When you are in your master bedroom, can you
3 hear a conversation occurring on the first floor?

4 A In the entryway, yes.

5 Q Okay. So someone in the entryway, vice versa, can hear
6 a conversation going on in the master bedroom?

7 A No.

8 MR. SCHILLINGER: Objection, Judge.

9 THE COURT: Overruled. Go on.

10 Q When you were interviewed, it lasted approximately
11 three hours, correct?

12 A I have no idea how long I was interviewed for.

13 Q Okay. But fair to say you could not see what was
14 happening in the driveway of the residence at that time?

15 A I do not believe it was three hours.

16 Q Okay. Putting aside the length of the interview, fair
17 to say you couldn't see what was going in the Chevy Tahoe in
18 your driveway while you were being interviewed?

19 A Yes, sir.

20 Q While you were being interviewed, do you know for a
21 fact whether agents were allowing the children to do anything
22 on the first floor?

23 A I do. I have spoken with my children about this and
24 they have said, no. Nobody was allowed to leave. My -- my
25 then 16-year-old --

1 MR. O'HANLON: Objection. Move to strike as to
2 hearsay.

3 THE COURT: No. You asked the question. You may
4 answer.

5 A My 16-year-old was fighting panic attacks and feeling
6 like she needed to try to keep everybody safe and that they
7 weren't allowed to do anything. She couldn't get anything
8 that would help with anybody just keeping them occupied
9 during this time either.

10 Q Again, you were not personally on the first floor of
11 the house?

12 A I was not.

13 MR. SCHILLINGER: Objection. It's been asked and
14 answered.

15 MR. O'HANLON: I have no further questions.

16 THE COURT: Anything further?

17 MR. SCHILLINGER: No, Judge. Thank you.

18 THE COURT: All right. You may be excused. You
19 may stay in the courtroom, if you wish.

20 THE WITNESS: Thank you, sir.

21 THE COURT: Next?

22 MR. SCHILLINGER: Judge, the defense calls the
23 defendant, Christopher Pence.

24 THE CLERK: Good afternoon, sir.

25 THE COURT: Okay. Wait a minute. Before you are

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1 sworn in, I want you to understand you can refuse to testify,
2 if you wish. If you do testify, anything you say can be used
3 against you in not only this hearing, but if there is a
4 trial. Do you understand?

5 THE DEFENDANT: I understand.

6 THE COURT: And you are waiving your rights to
7 remain silent as the defendant, are you?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand again that your
10 testimony could be used against you if this case goes to
11 trial?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. You may -- and you are
14 waiving your right to remain silent?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Swear him in.

17 THE CLERK: Sir, please state your full name.

18 THE DEFENDANT: Christopher Robin Pence.

19 THE CLERK: Spell your last name.

20 THE DEFENDANT: P-E-N-C-E.

21 THE CLERK: Thank you, sir. Please raise your
22 right hand.

23 C H R I S T O P H E R R. P E N C E,
24 called as a witness and being duly sworn, testifies
25 as follows:

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1 THE WITNESS: I'm sorry, your Honor, being
2 underdressed.

3 DIRECT EXAMINATION BY MR. SCHILLINGER:

4 Q Good afternoon, Chris. Can you state your name for the
5 record?

6 A Christopher Robin Pence.

7 Q Can you tell the Court where you resided prior to your
8 arrest?

9 A 2929 South 6500 West in Cedar City, Utah 84720.

10 Q I am going to direct your attention to October 27,
11 2021. On that day can you tell the Court what happened to
12 you?

13 A Well, it started out like any normal day. My alarm
14 clock went off at 5:55 and the light in the bathroom goes on
15 at 5:55. We have our home automated and so it's on a
16 schedule.

17 So I got up, I got dressed, put on some deodorant. I
18 walked out, walked through the bedroom. I left my wife and
19 our infant there in bed because she normally fed her. And by
20 the time I got out to the rest of the house, the rest of the
21 house lights were on at 6 a.m., I went upstairs and I got our
22 girls up. And I went next to the boys' room and I got some
23 of our boys up. And we went downstairs and we were getting
24 ready to do Bible. We always do Bible in the mornings.

25 Q And about what time was it when you started your Bible

1 study?

2 A Well, so before we started the Bible study, we always
3 start off with prayer and just praying for the day and all
4 that. But then we also wanted to say happy birthday to our
5 11-year-old daughter because that was her birthday.

6 Q Did the morning go as planned or did something happen?

7 A So then we were doing Bible and we were about 20
8 minutes into it when there was a loud bang at the door and
9 followed by the front of the house being lit up with lights.

10 Q Did you know what was happening?

11 A No.

12 Q What did you do next?

13 A Well, at the time I was still sitting on the floor with
14 Serenity next to me. I got up and as we were making our way
15 to the door, my son, my oldest son, said, "Isn't that strange
16 how as soon as the knock happened, all the lights turned on
17 at the same time." I thought, yeah, that was strange, buddy.

18 So I walked three steps down into the -- what we call
19 the sunken living room or the music room, the schoolroom and
20 walked across there. And as I looked out the window, I could
21 see that there were vehicles blocking all of our vehicles in
22 the driveway. I walked up the next three stairs to make my
23 way to the front door and I unlocked the deadbolt and opened
24 the door.

25 Q What happened when you opened the door?

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1 A I was -- the first thing I saw was a big black shield
2 right in the entryway.

3 Q Okay. And what happened next?

4 A And I saw some agents with helmets on. I saw agents
5 with -- looked like everyone there had bulletproof vests on.
6 A lot of them had big black coats on.

7 Q What did you think when you saw this?

8 A Well, what I thought was that 10 of my children were
9 directly behind me, and my wife and our infant was upstairs,
10 and our -- two of our toddler boys were also upstairs. And I
11 saw this massive display of force in front of me and all of
12 that behind me. It felt like -- it felt like Armageddon had
13 come to my front door and I was the only one standing in the
14 way.

15 Q So what did you do?

16 A Well, then I saw that agents had also brought up a
17 couple of sledge hammers and so I thought they are coming in
18 whether I let them in or not.

19 Q So what did you do?

20 A Then one of the agents told me that they had a search
21 warrant and then they pushed the door open. And then they
22 told myself and two of my children to go outside. We went
23 out on the front deck. My 12-year-old daughter at the time
24 tried to grab her coat and was denied. None of us had shoes
25 on. Some of us weren't wearing socks. It was mid 30s that

1 morning and we were standing on the cement patio.

2 Q How long were you out on that patio for?

3 A I really can't tell you.

4 Q Was it minutes?

5 A It felt like a long time. It was long enough for our
6 feet to be numb.

7 Q Did you ultimately go back in the house?

8 A I'm sorry?

9 Q Did you go back in your house, ultimately?

10 A Yes. At that time while we were outside, my oldest
11 daughter, who was at home, came and put her head on my
12 shoulder and she whispered to me, "I'm scared, Daddy." And I
13 said, "It's okay. Everything will be all right." And I kind
14 of was trying to reassure her that I did find it interesting
15 that within a minute, a bunch of armed men came into my house
16 and kicked me and my children outside.

17 Q Now, you said "kicked." Nobody kicked you physically.
18 You just mean you were asked to go outside?

19 A Yes.

20 Q Do you have any experience with the Army or law
21 enforcement?

22 A No.

23 Q So --

24 A No.

25 Q You are not familiar with, you know, what equipment is

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1 used in a raid like this or anything like that?

2 A No.

3 Q What did it look like to you?

4 A It looked like what I saw on news channels of, like,
5 the January 6th riots. It looked like the WTO riots I saw in
6 Seattle. It looked very similar.

7 Q That's -- you are describing the type of equipment law
8 enforcement was wearing in those three incidents?

9 A Correct.

10 Q Did there come a time when you had a conversation with
11 an FBI agent who you now know as Brian DeCarr?

12 A Yes.

13 Q And that began in the entryway of your house. Is that
14 right?

15 A Correct.

16 Q Can you tell the Court what happened there and --

17 A Like I said, I don't know how long I was outside, but
18 eventually they let us back in. They told my children to go
19 into the living room and then they stopped me in the
20 entryway. They told me that -- they said, "Do you have
21 anything on you?" I said, "I have my wallet." They said,
22 "Empty your pockets." I emptied my wallet, my keys and my
23 cell phone. I put them on the shoe rack there in the
24 entryway.

25 They then said that they were going to pat me down, and

1 so they patted me down. I was then asked if there was anyone
2 else in the house. I said, "My wife and my parents are
3 upstairs." I was told to bring them down.

4 Q And what did you do to bring them down?

5 A I started making my way for the stairs so I could go
6 bring them down, but I was stopped two stairs up. I was
7 actually a little confused. I didn't know how to bring them
8 down without going and getting them. I know it may be a dumb
9 moment of mine at the moment, but then one of the agents kind
10 of yelled at me to yell to them. And so I yelled up and I
11 said, "Come" -- "Everybody come down." And so I saw my
12 parents' door open and then shut, presumably so my dad could
13 get dressed. But it told me that at least they heard me.

14 Q Did you see your wife that morning?

15 A No.

16 Q What happened after you called for your parents -- or
17 called your family?

18 A One of the agents had told me that they needed to speak
19 to me and they said that it was a sensitive topic and that we
20 should talk outside.

21 Q Did they give you an option of talking in one location
22 or another location?

23 A Not that I remember.

24 Q Was it your impression that that conversation was
25 optional?

1 A No.

2 Q What did you do?

3 A I told them, "I don't have my shoes on." And they
4 said, "Where are they?" I said, "My shoes are upstairs in my
5 bathroom." And I was told to go get them. And as I was
6 walking up the stairs, an agent was following behind me. And
7 our stairs are set up that it's eight stairs and then a
8 landing and then eight more stairs.

9 So I was walking up to go retrieve my shoes and I was
10 told by the agent who was walking behind me that he said,
11 "Move slowly or you will be shot." And so I intentionally
12 moved slower than I was. I thought I was already moving
13 slowly, but I don't know.

14 Q Were you able to retrieve your shoes?

15 A I walked through the bedroom, I walked into the
16 bathroom and I got my shoes on successfully, yes.

17 Q And did you see your wife in the bedroom or the
18 bathroom?

19 A No.

20 Q And where did you go from there?

21 A I then went back out the same way I came. I walked
22 through the bathroom, back through the bedroom, and walked
23 back down the stairs.

24 Q And when you got to the bottom of the stairs, what
25 happened next?

1 A One of the agents motioned for me to go out the front
2 door.

3 Q Can you describe for me what you mean by "motioned"?

4 A With his hand. He kind of presented the door to me.

5 Q What happened next?

6 A I don't know if I opened the front door or if someone
7 else opened the front door, but I walked through it, I
8 started walking down the stairs, and I remember, you know --
9 just strangely I remember seeing my breath that morning, you
10 know, because it was cold. I remember seeing the line of
11 cars going down my driveway. I remember seeing that this was
12 the most cars I have ever seen at my house, and we have
13 church gatherings at our house.

14 Q The cars that were in your driveway, they were parked
15 between where your vehicles were and where the main road was.
16 Is that right?

17 A Yes.

18 Q Did you think that you could drive your car down the
19 driveway and just leave at that point?

20 A Absolutely not.

21 Q What happened next?

22 A We were making our way towards a Suburban, a Tahoe, and
23 one of the agents said, "Why don't you get in on the other
24 side." And so I walked around the front of the vehicle to go
25 get in the other side. I remember opening the door and

1 getting in and closing it.

2 Q Now, it's true nobody physically dragged you to the
3 car. That's true?

4 A That is correct.

5 Q Did you feel that you had the option of going anywhere
6 else besides that car?

7 A No.

8 Q Why not?

9 A Because -- because they had my children and my wife in
10 the home and I wasn't allowed to go with them.

11 Q What happened once you got in the car?

12 A I could see Agent Andersen in the car through the other
13 door. I could see them taking things off.

14 Q What things?

15 A Like, if I remember correctly, I saw Andersen taking
16 his vest off, his bulletproof vest. I saw things being put
17 in the front seat. I saw them putting things in the back.
18 At the time I would have called it riot gear, but apparently
19 it's not called riot gear.

20 Q What happened after they took off the gear?

21 A Agent DeCarr got in next to me and Agent Andersen kind
22 of shuffled past Agent DeCarr and shuffled past me to get in
23 the back seat. And at the time I could still see his pistol
24 on his hip as he walked right past me, so --

25 Q So at this stage, you were in the Tahoe with

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1 Agent Andersen and Agent DeCarr?

2 A Correct.

3 Q And you could see their sidearms through just -- right
4 out?

5 A I could see Andersen's as he walked past me.

6 Q Okay. Now, you are aware of the fact that
7 Agent DeCarr -- he did mention to you that you weren't under
8 arrest at that time? He told you that?

9 A He did tell me that.

10 Q Was that a distinction that seemed meaningful to you at
11 that point?

12 A No.

13 Q He also told you, you didn't have to talk to him,
14 right? You had no obligation to talk to him?

15 A He said I had no obligation to talk to him.

16 Q Did you even really understand what that meant?

17 A Well, at the time what it meant to me was that he
18 wanted me to talk to him.

19 Q Now, if you were going to decline that conversation,
20 where would you have gone to?

21 A I honestly don't know where I could have gone.

22 Q Could you have gone back in your house?

23 A I could have walked past the agents with the rifles,
24 sure.

25 Q And could you have gotten in your car and left?

1 A No.

2 Q So did you feel like you had a place you could go to
3 besides that Chevy Tahoe?

4 A No.

5 Q Now you could see agents out the glass in the Tahoe
6 while you were having your conversation with --

7 A Yes.

8 Q -- Mr. DeCarr and Mr. Andersen?

9 A Yes.

10 Q Now, there were -- was there a number of agents milling
11 around?

12 A There were agents that were coming and going to their
13 vehicles. There were agents that were coming and checking on
14 the vehicle that we were in.

15 Q When you say checking on it, what do you mean by that?

16 A Well, there was an agent with an assault rifle that I
17 clearly remember seeing. He kept coming down the stairs and
18 he'd look around that -- the van that was there and just
19 checked to make sure that the vehicle was okay, I presume.

20 Q Did you feel like that that agent was guarding the area
21 or surveilling the area in some way?

22 A Yes. Yes. He was -- it looked like he was guarding
23 the vehicles. It looked like he was guarding -- it looked
24 like he was checking in on the vehicle that I was in.

25 Q Do you remember was it daylight or was it still dark

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1 when all this started?

2 A It was still dark when all this started.

3 Q And what time was it; do you remember?

4 A When I heard the knock at the door?

5 Q Sure.

6 A 6:45, give or take five.

7 Q How much time lapsed between your initial contact with
8 the FBI and getting in the Tahoe?

9 A Twenty, 30 minutes.

10 Q How much time did you spend in the Tahoe that day?

11 A Over five hours.

12 Q At the time that you were placed in the Tahoe, were you
13 familiar with what a Miranda warning is? Have you ever heard
14 that phrase?

15 A I've heard it on TV shows.

16 Q You know now what it is, having been through this
17 process?

18 A Yes.

19 Q And did you ultimately receive a Miranda warning?

20 A I received a warning two, two hours into the
21 interrogation.

22 Q During the interrogation, Agent DeCarr and
23 Agent Andersen were in the Tahoe with you?

24 A Correct.

25 Q And at different times, other agents came in and came

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1 out of the Tahoe and asked you different questions?

2 A I don't remember if other agents came in to ask before
3 the warning.

4 Q After the warning?

5 A After the warning, absolutely.

6 Q Now, before you received your Miranda warning, you were
7 in the Tahoe. That's right?

8 A Correct.

9 Q And then after you received it, you just were still in
10 the Tahoe in the same spot?

11 A Correct.

12 Q Was there any significant pause in time between when
13 you gave your statement that was pre-Miranda and your
14 statement that was after?

15 A No.

16 Q It was all one big five-hour block, right?

17 A Yes.

18 Q And the vast majority of that five-hour block, you were
19 questioned by Agent DeCarr and Agent Andersen?

20 A Yes.

21 MR. SCHILLINGER: Thank you, your Honor. I don't
22 have any more questions.

23 THE COURT: Okay. Mr. O'Hanlon, you may
24 cross-examine.

25 MR. O'HANLON: Thank you, your Honor.

1 CROSS-EXAMINATION BY MR. O'HANLON:

2 Q Good afternoon, Mr. Pence.

3 A Good afternoon, sir.

4 Q How old are you?

5 A Forty-three.

6 Q And you have a bachelor's degree in finance from
7 Ashford University, correct?

8 A That is correct.

9 Q And fair to say you have worked in the tech industry
10 your whole career?

11 A Over 25 years, sir.

12 Q What kind of positions have you held?

13 A Manager of a computer store. I owned a computer store.
14 Network engineer, network architect and systems engineer.

15 Q And you have worked as a network security architect for
16 Microsoft for at least eight years, correct?

17 A My title is a Systems Engineer III at Microsoft. Yes,
18 sir.

19 Q All right. For eight years, correct?

20 A For eight years.

21 Q Now, you signed an affidavit in support of a motion to
22 suppress statements that you gave in this case.

23 Do you recall signing that?

24 A Yes, sir.

25 Q Did you understand the part where it said you are

1 affirming the following under penalty of perjury?

2 A Yes, sir.

3 Q What does penalty of perjury mean to you?

4 A That additional malfractions (phonetic) would be
5 brought up.

6 Q Was it your intent that everything in that affidavit
7 was the truth?

8 A Yes, sir.

9 Q Did you read that affidavit carefully before you signed
10 it?

11 A Yes, sir.

12 Q Okay. Was it your understanding that everything in
13 there was what actually happened to the best of your
14 recollection?

15 A Yes, sir.

16 MR. O'HANLON: Okay. I am showing, displaying
17 Document 21-3, which is in evidence, which is the defendant's
18 affidavit in this case. And I'm going to highlight paragraph
19 15.

20 It says, "After I was placed in the FBI SUV, I was
21 told by Agent DeCarr that I was not under arrest. This
22 distinction was meaningless to me when my house was
23 completely overrun with armed and armored FBI agents. I was
24 not told that I did not have to talk to him or that I could
25 end the questioning at any time."

1 Q Now, was that true, in fact, that you were not told
2 that you did not have to talk to the agent?

3 A I still believe that that is true, yes, because that
4 specifically was not said.

5 Q You don't remember being told that you did not have to
6 talk to them?

7 A I remember being told that I was under no obligation to
8 talk to them.

9 Q So you remember being told you were under no obligation
10 to talk to them, but you didn't believe them when they told
11 you that?

12 A It -- no, I didn't.

13 Q What is your understanding when you hear, "You are
14 under no obligation to talk to us"?

15 A Well, if you take my children away from me and you walk
16 me past a bunch of armed men and you tell me, you stick me in
17 a vehicle and then you say that I am under no obligation to
18 talk to you, what it tells me is that you want me to talk to
19 you and that it would be beneficial for my family if you did.

20 Q Looking at it now, that statement is wrong, correct?

21 A Which statement?

22 Q Your statement that you were not told that you did not
23 have -- you did not have to talk to them, the agents?

24 A I still maintain my statement.

25 Q So you think for a person who reads that and sees that

1 you swore that this is the truth and you swore that no one
2 told you, you did not have to talk to the agents, that
3 someone reading that is going to understand your alternative
4 understanding of that?

5 A As far as the definition of obligation?

6 Q You didn't say obligation in your affidavit. You said,
7 "I was not told I did not have to talk to them," correct?

8 A That is correct. And I was not told that I did not
9 have to talk to them. I was told I was under no obligation
10 to talk to them.

11 Q Would you agree that's misleading to someone who is
12 reading that?

13 A Are you asking me to speculate what someone else is
14 thinking?

15 Q I'm asking you if you read something or someone said, I
16 was told I did not have to talk to this person, would you
17 understand that to have some different meaning from what you
18 just read?

19 MR. SCHILLINGER: Objection, Judge.

20 THE COURT: Sustained.

21 Q Someone reading this would have to understand your
22 interior thought process in order to actually understand --

23 MR. SCHILLINGER: Objection, Judge.

24 Q -- what you meant by that, correct?

25 THE COURT: Sustained.

1 Q Are there any other parts of the affidavit that are
2 similarly incorrect, to your knowledge?

3 MR. SCHILLINGER: Objection, Judge.

4 THE COURT: Sustained.

5 Q You agreed to speak with the agents in the Tahoe,
6 correct?

7 MR. SCHILLINGER: Objection, Judge.

8 THE COURT: Overruled. You may answer.

9 A I was told that they wanted to speak to me and that it
10 was a sensitive topic and that it should be done outside.

11 Q You were given the option of whether to speak to the
12 agents or not, correct?

13 A I don't remember them giving me an option, no.

14 Q You were given the option further of having the
15 conversation in the residence or in the vehicle, correct?

16 MR. SCHILLINGER: Judge, I'm just going to object
17 to the form the question.

18 THE COURT: Overruled. Answer the question.

19 A Could you restate it?

20 Q You were given the option of speaking to the agents if
21 you wanted to speak with them either in the residence or in
22 the vehicle, correct?

23 A I cannot answer that question. I don't know. I don't
24 remember that taking place, no.

25 Q At no point were handcuffs placed on you, correct?

1 A No physical handcuffs were placed on me.

2 Q So I'm clear, you were never handcuffed, correct?

3 A No.

4 Q No one told you before you went out to the vehicle that
5 you were under arrest, correct?

6 A No.

7 Q That is correct, yes?

8 A Correct.

9 Q You opened the door on the side of the Tahoe that you
10 entered, correct?

11 A Correct.

12 Q Agent DeCarr then entered on the other side. Is that
13 correct?

14 A Correct.

15 Q You close the door after entering the vehicle, correct?

16 A Correct.

17 Q Again, in your affidavit I want to cite you to the same
18 paragraph, Paragraph 12, the first sentence. "I was taken to
19 one of the FBI Tahoes and placed in the rear seat."

20 That's what you swore was the truth, correct?

21 A Mm-hmm.

22 THE COURT: Yes?

23 THE WITNESS: Yes.

24 Q So you walked to the car by yourself, correct?

25 A No. I walked to the car with a couple of agents.

1 Q Did they have their hands on you?

2 A No.

3 Q They didn't put you in the car, correct?

4 A They told me to get in. They said, "Why don't you get
5 in on the other side."

6 Q Well, that's not what you said in your affidavit,
7 correct?

8 A What do you mean?

9 Q You didn't say, "I was instructed by the agents to get
10 in the car." You say, "The agents placed me in the car."

11 A Okay.

12 Q Those are two different things, correct?

13 A I was placed in the car by agents who were telling me
14 what to do.

15 Q Right. You place a child in a car, correct?

16 MR. SCHILLINGER: Objection, Judge. I'll withdraw
17 the objection, actually, I guess. He can answer that.

18 A Yes.

19 Q All right. You place items on your counter, correct?

20 A Yes.

21 Q Placing involves somebody putting something somewhere,
22 correct?

23 A Yes.

24 Q You were not put in the vehicle physically by anybody,
25 right?

1 A Physically, no.

2 Q But you swore under penalty of perjury that you were
3 placed in the vehicle, correct?

4 A Correct.

5 Q Would you acknowledge that that is misleading to
6 someone who is reading the affidavit?

7 MR. SCHILLINGER: Objection, Judge.

8 THE COURT: Sustained.

9 Q Later on in the affidavit, citing you to Paragraph 16,
10 second paragraph, or, sorry, second sentence. "From the
11 backseat of the vehicle, I could see agents wielding assault
12 weapons in my home with my family."

13 A Correct.

14 Q And this is while you were in the second row of the
15 vehicle?

16 A Correct.

17 Q I'm going to show you what's been marked as
18 Defendant's L.

19 MR. O'HANLON: Permission to approach?

20 THE COURT: You may.

21 Q Isn't it true that the van or the Tahoe that you were
22 in was blocked from the residence by at least two other
23 vehicles?

24 A No. You could see over the top of the van.

25 Q So you could see past the first row of the seats in the

1 car, correct?

2 A No. You could look out -- basically from where I was
3 sitting, you could look out the side window that Agent DeCarr
4 was sitting at. You could see over the top of the vehicle
5 and you could see through the windows in the -- what we call
6 the computer room or the sunken living room.

7 Q And it's your testimony -- or it's your testimony that
8 there was an agent standing there brandishing an assault
9 rifle the entire time that you were being interviewed?

10 A He would leave and come back.

11 Q I cite you to Paragraph 13. You state, "Due to my
12 seating position in the vehicle while looking at
13 Agent DeCarr, I had a clear view of my home and could
14 continuously see agents storming my home."

15 Were agents running into your home while you are
16 sitting in the car?

17 A They were -- were they running? Probably not running,
18 no.

19 Q You didn't say, I saw agents walking into my house.
20 Would that have been more accurate?

21 A Probably.

22 Q Isn't it true you saw agents walking in and out
23 carrying items, for example?

24 A Some were.

25 Q They weren't brandishing weapons, were they?

1 A Some were.

2 Q So you are saying after the residence was secured, you
3 are still seeing agents walk in and out?

4 A Yes.

5 Q Brandishing -- or, sorry, holding weapons?

6 A Yes.

7 Q You described it as "storming," correct?

8 A For the first few minutes, yeah, it was storming. I
9 would call that storming. But then it did turn, probably, I
10 would call, into walking.

11 Q Is there a reason why you chose the word "storming" as
12 opposed to just entering and exiting the building?

13 A No.

14 Q You didn't think that using a word like "storming"
15 would invoke images of soldiers like storming a castle?

16 MR. SCHILLINGER: Objection, Judge.

17 THE COURT: Overruled. Go ahead.

18 A That is at the time what it felt like to me.

19 Q Looking back on it, would you say it was an
20 exaggeration?

21 A Not entirely.

22 Q Because that was how you perceived it?

23 A Yes.

24 Q Okay. You wouldn't say that when you said you were
25 placed in the vehicle, that was an exaggeration?

1 A No.

2 Q You wouldn't say when you understood being told you had
3 no obligation to speak to the police that you actually
4 interpreted it as you were required to speak to the police
5 that that was an exaggeration as well?

6 A No.

7 Q You assert several times in your affidavit that the
8 agents were wearing riot gear, correct?

9 A Correct.

10 Q Have you ever seen depictions of police at an actual
11 riot?

12 A Other than what I have seen on TV, on the news.

13 Q They typically have shields, correct?

14 A Yes.

15 Q They typically have batons?

16 A I don't know.

17 Q They typically have helmets with visors?

18 MR. SCHILLINGER: Objection, Judge.

19 THE COURT: Overruled. If he can answer.

20 A Some.

21 Q They typically have protection for their legs?

22 A I don't know.

23 Q Isn't it correct that you chose to use the term "riot
24 gear" because it made the agents who executed the search
25 warrant sound scary?

1 A No.

2 Q You would acknowledge in retrospect, correct, that the
3 agents were merely wearing body armor, correct?

4 A In some aspects.

5 Q Would you grant that describing somebody who is wearing
6 body armor as the same as wearing riot gear is another
7 exaggeration?

8 A No. Because to my definition, they were the same.

9 Q You testified earlier that you and your children were
10 actually moved outside the residence?

11 A Yes.

12 Q Where outside the residence?

13 A On the front porch.

14 Q How long were you and the other children outside on the
15 front porch?

16 A As I told Schillinger, I don't remember.

17 Q One second? More? One minute?

18 A I don't know. Long enough that my feet were cold.
19 Long enough that we were numb. I don't know.

20 Q Okay. This fact wasn't included in your affidavit,
21 correct?

22 A Correct.

23 Q Did you just remember it today?

24 A No.

25 Q So you knew it before creating the affidavit, correct?

1 A Yes.

2 Q And you just didn't include it, even though you went
3 through every other step of what happened to you day?

4 A I didn't go through every step that happened that day.

5 Q You understand that there is surveillance footage that
6 covers the front porch of the residence, correct?

7 A Yes.

8 Q So how long should you and 10 of your children be
9 depicted in that video?

10 A I still don't know. You are asking how long I was
11 outside?

12 Q Well, you said until your feet were numb, correct?

13 A Correct.

14 Q And you can't give me a ballpark number of how long
15 that took?

16 MR. SCHILLINGER: Objection, Judge.

17 THE COURT: Overruled. If he can answer it.

18 A Could have been minutes.

19 Q So more than a minute?

20 A Presumably.

21 Q More than two minutes?

22 A I still don't know.

23 Q So the video should depict yourself and how many
24 children on the front porch of the residence?

25 A Ten.

1 Q For at least two minutes. Fair to say?

2 A Sure.

3 Q And this is something that never made its way to your
4 affidavit about what happened to you that day?

5 A Correct.

6 Q Even though you are giving all these other examples of
7 the ways that your family reacted to the execution of the
8 search warrant?

9 A Correct.

10 Q You did not have a chance to speak with Mrs. Pence that
11 morning, correct, before you went out to speak to the agents
12 in the vehicle?

13 A Correct.

14 Q And you were on the stairs going up to get your shoes
15 when you were called and the agent telling you to slow down
16 or that you would be shot?

17 A That's correct.

18 MR. O'HANLON: One more minute, your Honor.

19 THE COURT: Let's move on.

20 Q It's correct you did not ask to speak to your family,
21 correct, after entering the vehicle?

22 A That is correct.

23 Q And no one yelled at you in the vehicle, correct?

24 A That's correct.

25 Q And you will grant now that you were told literally the

1 words that the agents told you was that you did not have to
2 speak with them, correct?

3 A Not in those words, no. Do you want the exact words?

4 Q You do recall you were told you were not under arrest,
5 correct?

6 A Correct.

7 MR. O'HANLON: I have no further questions.

8 THE COURT: Redirect, if any?

9 MR. SCHILLINGER: No, Judge. Thank you.

10 THE COURT: Okay. You may take him down from the
11 stand. He may be re-shackled, if it's appropriate.

12 Any more witnesses on behalf of the defense?

13 MR. SCHILLINGER: No, your Honor. Thank you.

14 THE COURT: All right. Is the evidence closed,
15 Counselors?

16 MR. O'HANLON: It is, your Honor.

17 MR. SCHILLINGER: Yes, Judge.

18 THE COURT: Okay. I'm going to give you
19 exceptionally lengthy time to present a memo, legal memo, to
20 July 14th, on or before, and I'm doing that so that you can
21 order a transcript of the proceedings today which the court
22 reporter will get to you at least by June 30th, if not
23 before, and then you can use that in your memorandum. And at
24 the moment, I reserve decision on the motion until after I
25 have received memorandums from both of you. Any questions?

1 MR. O'HANLON: No, your Honor.

2 MR. SCHILLINGER: No, Judge. Thank you.

3 THE COURT: In the meantime, the defendant is
4 remanded to the custody of the United States Marshals as this
5 matter continues to proceed.

6 Mr. McBrearty.

7 THE CLERK: Court stands adjourned. Thank you,
8 folks.

9 (Court adjourned, 2:49 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, LISA M. MAZZEI, RPR, Official U.S. Court
Reporter, in and for the United States District
Court for the Northern District of New York, DO
HEREBY CERTIFY that pursuant to Section 753, Title
28, United States Code, that the foregoing is a true
and correct transcript of the stenographically
reported proceedings held in the above-entitled
matter and that the transcript page format is in
conformance with the regulations of the Judicial
Conference of the United States.

Dated this 7th day of July, 2023.

/S/ LISA M. MAZZEI

LISA M. MAZZEI, RPR
Official U.S. Court Reporter

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Official U.S. Court Reporter